PATTERNS OF POWER · AOTEAROA NEW ZEALAND

Aotearoa New Zealand

The Complete Study · 1840 — 1877 — 1987

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with Claude (Anthropic) · 2026

held as tested, not revealed

Held as tested, not revealed.

A case study in the Patterns of Power series.
Primary sources quoted exactly; modern scholarship paraphrased and credited.
Contested figures given as ranges. Nothing reconstructed from memory.

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Preface and Outline

Front matter · how this study was made, the disciplines it holds itself to, and a map of its fourteen parts

The collaboration

This is a case study in the Patterns of Power series, applying the series' framework to Aotearoa New Zealand under the Crown, from the signing of the Treaty of Waitangi on 6 February 1840 to the Court of Appeal's judgment in the Lands case on 29 June 1987, with the settlements that followed as its coda. The framework is a lens for reading how any order of power is founded, dressed and held: the floor of force beneath every order, the robe of doctrine laid over the floor to make the force cheap, the settlement that divides the spoils, the cost column in which each subject prices defection, the formation that installs a world in a child before he can weigh it, the seam that manages the belief on which the whole depends, the default by which an elite coordinates without instruction, and — running through all of it — position logic, the proposition that rulers in like positions converge on like solutions because a position poses a problem with only a few good answers.

New Zealand was chosen because it is the strongest case anybody makes for a settler colonisation, and because a framework that can only read badly conducted conquests is not a framework. It is also, as it turned out, the series' second control case for the chair. A conqueror never meets a blank field; he meets an older order already in place, itself the naturalised residue of some earlier conquest, and his cheapest option is to find the seat at the top of it and sit down. British Northern Nigeria is where that worked: a caliphate with a throne, taken, and millions governed through it at almost no cost. British Kenya is where it could not be done, because Kikuyu authority had never pooled into a seizable apex — so the British forged a chair and paid for the forgery every year, in force, for six decades. Aotearoa presented the same absence and produced a third answer, because this conqueror wanted something different. Māori authority ran through whakapapa and mana and ended where a rangatira's following ended; there was no paramount, no office, no signature that could bind a district, and no mechanism by which any Māori could have delivered the country, because none existed for Māori either. Britain did not forge a chief. It forged a title. This study is an account of what a register does that a chief cannot.

The study was built the way the series is built, one module at a time. The author brought the framework, its spine, and the case, and held the collaboration to its disciplines; Claude, Anthropic's model, did the research — verifying every load-bearing quotation, date and figure by web search against a source reproducing the primary text before any module was written — and produced the drafts, applying the framework module by module, each presented and confirmed before the next was begun. The framework's concepts are the series'; the New Zealand application, and the refinements it yielded, are the work of the collaboration.

Its engine throughout is the method of information asymmetry. The study exists to show the gap between what was said at the centre and what was done on the ground, and it works by setting the exact public words beside the exact words of the ground — Lord Normanby's disclaimer of "every pretension to seize on the Islands of New Zealand" beside his instruction, in the same despatch, that the price paid to the natives would bear "an exceedingly small proportion" to the resale price and that there was "no real injustice in this inequality"; the vocabulary Henry Williams used for sovereignty in 1835 beside the vocabulary the same hand used in 1840; the West Coast Commission's finding that four hundred prisoners were held "not for crimes, but for a political offence in which there is no sign of criminal intent" beside the fact that the imprisonment continued and nothing followed; four and a half pounds an acre paid to a runholder in the 1890s beside a fortieth of a penny an acre paid at Akaroa in 1848. It lays out the arithmetic and leaves the sum to the reader. It does not preach the conclusion.

The study went in holding several premises about its own subject and the sources corrected most of them, and the corrections are on the page. It expected a metropole whose attention had to be managed; it found a metropole that did not want the country, said so in writing in the founding despatch, and was dragged in by a private company selling land in London it had not bought. It expected the seam to be held closed by distance; it found the seam permanently open — missionaries writing to their own committee in London for fifty years, three former law officers of the colony publishing their dissent in the imperial capital inside three years — and the order taking no damage whatever, which disposes of distance as the mechanism and leaves only indifference. It expected formation to be withheld from the majority on the Kenyan model; it found formation graded rather than withheld, because article three had already made Māori British subjects in 1840 and there was no admission left to deny. It expected the great instrument of the founding to be a bargain with a native elite; it found an instrument negotiated with the conquered themselves whose benefit ran to a third party not named in it. Where a load-bearing line could not be run to ground —

the drafting order of He Whakaputanga, the provenance of a chief's remark about a British Resident, the exact interval between a proclamation's signature and a Governor's landing — it was flagged on the page or dropped rather than guessed.

The disciplines

Five rules govern every module.

Quotation. Public-domain primary sources — treaties, statutes, proclamations, despatches, court judgments, parliamentary debates, commission reports, petitions, memoirs, period newspapers — are quoted exactly, at the length the argument needs, because in an order held together by legal fictions the precise wording is the evidence and not its decoration. The two texts of the Treaty are given side by side, in te reo and in English, because the whole case turns on the wording. Modern copyrighted scholarship is paraphrased, briefly, and credited.

No fabrication. No quotation, date, attribution or figure is ever invented or reconstructed from memory. What cannot be verified against a source reproducing the primary text is dropped or flagged, never guessed; contested figures are given as ranges. Where a quotation reaches this study through a translation, a modern scholar's citation or an encyclopaedia entry rather than from the original serial, the chain is named where the quotation appears and again in the note on sources. Several load-bearing lines in this study — the Parihaka statutes above all — are so flagged and remain to be read directly against the statute book.

Gravity without partisanship. Suffering is held with gravity, and the study refuses both flattery and demonisation. It writes from the top of the order, where the men who ran it actually stood, and takes their professions with the grain of salt they took them with — asking not whether the story was sincere but what it was for and whether the machine's spending changed. It also credits what was genuinely done: the treaty, the subjecthood, the franchise, the tribunal, the apologies. Legibility is not pardon, and neither is it prosecution.

Contribution. Every module returns a refinement to the framework, stated plainly in its closing section, rather than merely applying the framework to the case. The discipline is one spine and its confirmations, not a manufactured new law each chapter; where the evidence refused a finding, the study says so.

Held as tested, not revealed. The pattern is treated as something discovered and tested against the evidence, not handed down as doctrine — a lens laid over the record, a tendency and never a law.

What Aotearoa added to the framework

Because this study runs a conquest that found no seat and wanted land rather than obedience, it was able to confirm a run of the framework's standing findings on an unusually complete archive and to add a set of its own.

Chief among them: that the chair question needs a second axis, because a conqueror who wants a flow of tax needs a person to render it and must inherit or forge a chair, while a conqueror who wants the ground needs only a document a registry will accept — so where no seat existed and the object was land, the answer was a court, and a court is cheaper than a chief because a title has only to be recorded while a chief has to be obeyed and obedience must be watched; that a register is self-ratifying, every subsequent mortgage and survey converting the original finding into settled fact, which is why this colony could put its imperial regiments on ships in 1870 with the dispossession half-finished and finish it anyway; that the speed at which a formation naturalises is governed not by elapsed time but by the number of competing claimants for the child's attention, an uncontested field forming fast and being equally fast to re-form; that a formation which has taken supplies the vocabulary of its own opposition, and that this is the test for whether it took, since coercion produces obedience and cannot produce a frame; that formation requires not a curriculum but a room the child cannot avoid, so that sixty years of English-only schooling did not kill a language and thirty years of migration did; that where the conquered have already been made subjects, formation cannot be withheld, only graded, which produces an adversary the state itself formed, attacking from inside its own courts and scriptures; that a floor paid in title cannot be withdrawn, because there is no payment to stop, and that this is why a borrowed army could sail without the colony reverting; that where a conqueror arrives without a floor the conquered can sell him one, and in the absence of an apex the price is set hapū by hapū; that a settlement's consideration may run between two parties while its benefit runs to a third, by way of a clause described to the conquered as a protection; that a robe's addressee migrates, and the calendar names it more honestly than any statute, a state that dates its founding to a proclamation rather than to a treaty having told you who it thinks it owes; that a robe changes genre when the taking ends, from justification, which states refutable claims, to reassurance, which states nothing and is therefore far more durable; that a discarded audience becomes the domestic opposition's court of appeal until the metropole's last practical lever is withdrawn; that the position on the gradient from force to conviction is a property not of an order but of an order-and-a-population pair, one state governing by benefit and by rifle in the same year four hundred miles apart; that where exit is cheap the state must bid, and the bidding looks like conscience; that exit is closed more cheaply by a surveyor than by a

regiment, because a road does not block the way out but out-competes the destination; that where title must be proved before an official body the cost of proving is itself an extraction, sufficient to accomplish the transfer without a single adverse ruling; that a hierarchy is defined not by what it does to outsiders but by what it will not do to its own, the ratio between the two prices naming the membership line in money; that internal redistribution with compensation strengthens a default rather than straining it; that liberties are removed by named exception rather than by abolition, the exception being invisible to everyone who keeps the right; that an appeal decided by the respondent is a null that manufactures evidence of its own sufficiency; that a parallel institution is a photograph of the exclusion that produced it; that the moment of danger for a settled order is not the assault but the reorganisation, because an asset in motion must be legislated for; that a gesture clause which constrains the state is a loaded instrument while one which empowers it is an ornament; that where a conquest takes land rather than coordination, inside a market economy, the metabolic note is paid in chronic morbidity rather than famine, decades late and readily blamed on the dying; that a low sword count is evidence not of a mild order but of an administrative instrument; and that forgetting is a scheduling operation rather than a suppression, a calendar having a finite number of solemn days and whoever fills them determining what a country can remember.

And, largest and least comfortable: that conduct tracks constraint and not character — the same administrator who made Fijian land inalienable in 1875 being, five years later, the Governor of New Zealand, at sea while his ministers signed the Parihaka proclamation, and able to do nothing.

The arc

A preface, a landscape opening and twelve modules, each with a framework function and its own evocative title.

Landscape — the two societies on the eve of conquest. Incompetent to Act, or Even to Deliberate, in Concert. The Polynesian settlement as a conquest not of a people but of a biota, naturalised in twenty generations because the field held no alternative; a hapū order with no apex and no office a stranger could enter; the Musket Wars still running and Rēkohu five years behind; and a reluctant empire whose founding despatch contains both the disclaimer and the arithmetic.

1 — The Floor of Force. Forty Pounds a Year for an Infantryman. A treaty signed by a man with no soldiers at all; a first war that ended with the Crown declining to re-erect its own flag; a floor rented from the empire by the head and given notice on for reasons of accounting; a third of the Crown's dead being Māori; and the

confiscation statute that replaced a wage with a title and therefore could not be withdrawn.

2 — The Settlement. If the Native Chiefs Do Not Know the Contents. Two texts that do not agree, and the vocabulary the same translator had used five years earlier; the clause that mattered being not sovereignty but *te hokonga*; a monopsony described to the conquered as their shield; and the court that manufactured vendors ten at a time where no vendor had existed.

3 — The Robe. Section Seventy-One. A robe cut for Exeter Hall and a constitutional clause providing for Māori self-government that was never once brought into force; an addressee removed by statute in 1856; the calendar dating the founding to a proclamation for ninety years; and a dead letter preserved because it was harmless, and therefore available.

4 — Formation. Anointed with the Word of God. The formation that arrived before the Crown did, carried inland by the previous conquest's freed captives; schools the conquered asked for and paid for; a ceiling placed not at literacy but at secondary education; a Māori King anointed with a Bible and a prophet who was Moses; and a language nest opened in 1982 to work the same lever in reverse.

5 — The Cost Column. The Smoking Meal of Joints of Mutton. A settler labourer who had already exercised exit at great cost to enter the arrangement and could exercise it again for two pounds; reforms priced as the market rate of a population that can leave; and, in the same year and the same treasury, sixteen hundred men sent against a village whose offence was a plough.

6 — Extraction. So Far as the Eye Can See. No hut tax, no poll tax, no labour requirement, because the labour was imported; twenty million acres for two thousand pounds; a court that charged the defendant for the trial; a circuit running from London bondholders to a customs house and back; and the difference between an order that needs a man's work and one that needs only his ground.

7 — Information and Suppression. The Sparrow Alone Upon the House-Top. A government that answered a Māori newspaper by founding a Māori newspaper, four months before invading; a state that hid nothing from anybody because nobody would act on knowing; suppression written into the statute book rather than into a censor's file; and the one occasion a censor was bought, in 1951, against dockworkers.

8 — Elite Coordination and the Default. The Land Was Obtained in Large Areas by Capitalists. Every title in the country deriving from one instrument, so that each man defending his own farm defended the confiscation; a fortieth of a penny an acre from outsiders and four and a half pounds from members; and four Māori seats made permanent by the private arithmetic of the men who did not want them.

9 — Plurality or Foreclosure. A Minister of Pākehā Affairs. The world's first women's franchise carried by two councillors voting against their own convictions to punish a premier; habeas corpus suspended by name for one population while everyone else kept it; a right of petition that routed every petition back to the respondent; and two parallel parliaments built in the excluding institution's own image.

10 — Change and Collapse. A Supplementary Order Paper. Marches contained without the apparatus straining; a customer who changed markets in 1973 and a currency crisis eleven years later; thirty-seven per cent of the country's land put in motion for fiscal reasons; and a token sentence added late at committee stage that reopened a register closed since 1877.

11 — The Grim Accounting. Smooth Down the Dying Pillow. A sword ledger smaller than a single morning at Passchendaele; a metabolic note called not by broken coordination but by the removal of the land, and paid in tuberculosis and infant mortality thirty years after the fighting stopped; and a forgetting accomplished by five hundred memorials to somewhere else.

12 — Convergence and Divergence. The Governor Was at Sea. What this case shares with the collection and where it went its own way; the strongest case ever made for a settler colonisation, put at full strength; and Fiji, where a British administration in the same decade kept the land in indigenous hands and has kept it for a hundred and fifty years — the answer to the counter-position being delivered by the same man, in the same commission, five years apart.

Incompetent to Act, or Even to Deliberate, in Concert

The ground before the Treaty — the order the Polynesians built on an empty archipelago and drove into the grain of the world in twenty generations, and the reluctant empire that arrived to take it

The ground read twice

A conquest has to be read against the order it fell on, or it reads as an act performed on empty scenery; and a colonial conquest has to be read twice, because the man who performs it answers to an audience the conquered will never meet. So this study begins on two shores. What follows reconstructs the archipelago the British came to and the kingdom they came from, in that order, and it ends on the document the first of those two societies produced five years before the second arrived to supersede it.

The doubling has an oddity here that will bend everything downstream, and it is worth naming at the outset because the reader who expects the ordinary colonial shape will misread the first ten years. In most of the cases this collection has run, the metropole wanted the ground and the difficulty was arranging matters so that its own voters, taxpayers and conscripts could be told the taking was lawful. In this one the metropole did not want the ground, said so in writing, and was dragged to it by a private joint-stock company selling land in London that it had not bought. The Secretary of State who authorised the annexation described the enterprise in the same despatch that authorised it as *a measure essentially unjust*. That is not the usual arrangement, and the standard reading — hypocrisy detected, gap exposed — will not survive contact with the document. The gap in this case does not open between London and the beach. It opens inside a single despatch, between one paragraph and another, and both paragraphs are sincere.

Landscape I — Aotearoa

The conquest that took, and what it took

Every order this collection has examined was built on top of an earlier one, and the rule the collection works by is that a conqueror never meets an aboriginal or timeless baseline: what he finds is somebody else's conquest, naturalised until it looks like the way the world is. Aotearoa is the hardest case that rule has met, and it survives it, but not in the form the rule is usually stated.

The islands were empty. Whatever earlier voyages may have touched them, the settlement that took — the one from which every hapū in the country traces descent — occurred between roughly 1250 and 1300, and it is dated now by four independent lines of evidence that agree: radiocarbon from the earliest occupation sites, the Kaharoa tephra of about 1314 as a marker in the soil, the first rat-gnawed seeds and shells, and the sudden appearance of sustained burning in the pollen and charcoal record. There was no prior human population. There was no one to defeat.

And it was still a conquest, because what was taken was a biota, and the taking was total. The archipelago the first canoes reached was forested over more than four-fifths of its surface and had assembled, in eighty million years of isolation, an avifauna that had never met a mammal. Within about a century and a half every species of moa was gone — nine or so species, from birds of fifty pounds to birds of six hundred — and Haast's eagle, which ate them, went with them. Some forty species of bird went, along with a bat, frogs and a range of lizards. And the fires went through the forest: by 1840, before a European had cleared a single acre for a farm, roughly six and three-quarter million hectares of forest had been burnt off and replaced with fern, scrub and short grassland, most of it on the eastern side of both islands, most of it inside the first two centuries. The tussock plains that ran from the flanks of the Southern Alps to the Canterbury coast, which the settlers of the 1840s and 1850s stepped off the boats and took for the natural face of the country and stocked with sheep accordingly, were ash.

That is what makes the case sharp rather than an exception. The rule holds — this order was built on a conquest — but the conquest was of a place rather than a people, and a place does not remember. There was no defeated population to carry a rival account forward, no dispossessed elite to be co-opted or watched, no earlier order whose grandchildren might notice. And so the naturalisation ran faster than anything else in the record. The transformation was complete, irreversible, and invisible: by the eighteenth century a person born on the Canterbury plains inherited a landscape his own ancestors had made and had no means whatever of knowing it.

The order that grew on it

What grew on that ground in five hundred years was dense, coherent and thoroughly believed, and it had one feature that decided the shape of everything the British would later be able to do.

It ran on descent. *Whakapapa* — the recitation of genealogy back through the founding ancestors to the canoes and beyond them to the gods — was not decoration on the social order; it was the social order's operating record, fixing who a person was, whom he owed, where he might stand and what he might take. From it came rank: the *rangatira* and the senior *ariki* lines descending from the eldest of each generation, the *tūtūā* from junior lines, and beneath both the *taurekareka*, war captives, who stood outside the descent system altogether and therefore outside everything descent conferred. The working unit of common life was not the *iwi* but the *hapū*, a descent group of a few hundred with its own land, its own gardens and fishing grounds, its own marae and its own rangatira, and the *iwi* was the wider set of hapū sharing a founding ancestor, convened for war or great occasion and otherwise mostly latent.

Authority ran on *mana*, which was inherited and could also be lost: a rangatira who led his hapū badly diminished, and a rangatira with no following had no instrument whatever for compelling one. The point bears stating plainly because it will be load-bearing for a century: chiefs held enormous influence and had no coercive apparatus. There were no soldiers who were not also relatives, no treasury, no jail, no standing means of imposing a decision on a hapū that did not want it. What ordered the country instead was *tikanga* — custom carrying the force of law without an enforcer behind it — policed by *tapu*, the sacred restriction whose breach brought sanction from the order of things rather than from a magistrate, and balanced by *utu*, the obligation of return that made every injury a debt and every gift a claim, and which drove the reciprocal violence of the pre-contact centuries as reliably as it drove hospitality.

And there was no apex. Not a weak one, not a contested one: none. There was no paramount chief of the islands, no confederation with a standing head, no council with jurisdiction beyond the assent of those in the room. This is the single most consequential fact in the landscape, and it needs stating in its plain form rather than its picturesque one, because everything the British could and could not do runs from it. A conqueror arriving on a coast asks one practical question before he asks any other: whom do I have to deal with to get what I came for, and did the last conquest leave anyone with the standing to deliver it? In Northern Nigeria the answer was yes, there was a seat, and a stranger could sit down in it and operate the machine unchanged. In Aotearoa the answer was no — not because the order was simple, which it was not, but

because its coordination had never pooled into an office. There was nothing to capture. Whatever the British wanted, they would have to obtain it hapū by hapū, or manufacture an instrument that did not exist.

Land was held the way authority was held, which is to say as a set of relations between persons and not as a thing. Rights in a piece of ground came from *take tūpuna*, descent from an ancestor who held it; from *take raupatu*, conquest; from *take tuku*, gift; and above all these they were kept alive by *ahi kā*, the burning fire — continuous occupation and use, without which a claim cooled and eventually went out. Rights overlapped and interlocked: one group might hold the eel weir, another the bird-taking rights in the same stand of trees, a third the right of passage. Nobody owned a parcel in the sense a London conveyancer would recognise, and nobody could sell one, for the same reason a man cannot sell his place in his family. There was, in the strict sense, nothing there to convey.

What the muskets did

Then, in the twenty-two years immediately before the Treaty, the whole arrangement was put through a convulsion, and it was still going on when the British arrived.

Two European goods did it, and the less famous one mattered more. The potato reached the north in the 1790s and spread fast: it out-yielded the kūmara, stored better, grew in colder ground, and — decisively — could be tended by women and by captives, which released fighting men from the food economy for months at a time. The musket arrived alongside it and, at first, unevenly. From 1818 the Ngāpuhi chief Hongi Hika, having armed his people ahead of everyone else, led *taua* out of the Bay of Islands into the Hauraki, the Waikato, the Bay of Plenty and beyond, against opponents holding wooden and stone weapons; and every group he broke had, thereafter, exactly one rational course open to it, which was to obtain muskets and use them. The trade that paid for the muskets — dressed flax above all — was worked by captives taken in the raids, so that each round of war financed the next.

The scale is not precisely recoverable and should not be pretended into precision. The engagement count runs, depending on who is counting and what is counted, from something over five hundred to as many as three thousand battles and raids. The dead are conventionally put at around twenty thousand from direct and indirect causes, with the range running up towards forty thousand; the much larger figures of sixty to eighty thousand that circulated in the older literature have been rejected as inflated, on evidence that particular engagements were multiplied several-fold in the retelling. Something between thirty and forty thousand more were enslaved or driven from their

territories in the *heke*, the great migrations, which emptied whole districts: Ngāti Toa out of Kāwhia to Kapiti under Te Rauparaha and thence across the strait into the Wairau; Ngāti Mutunga and Ngāti Tama out of Taranaki to Wellington; Te Āti Awa behind them. Angela Ballara's revision, which the honest account has to carry, is not chiefly about the count but about the category: she argues this was *taua* warfare intensified rather than a new phenomenon caused by Europeans, that the ritual and legal architecture of the raid was in ordinary use throughout, and that traditions of very large pre-musket battles — Hingakaka, near Te Awamutu around 1807, whose reported numbers are wholly unverifiable — indicate continuity rather than rupture.

What matters here is not the toll but the map. When the British began buying land in the late 1830s, an unknown but very large number of districts were held by groups who had arrived within the last fifteen years, by *take raupatu*, over the *ahi kā* of people who were alive, dispossessed, and in some cases living a hundred miles away and intending to return. Rights that had been legible for centuries were, in 1840, contested in ways nobody could adjudicate. Every purchase the New Zealand Company and the Crown would make in the Cook Strait region ran straight into this, and the wars of the 1860s would run into it again. The chiefs who came to Waitangi were not coming out of innocence. Several were coming to stop something.

Rēkohu

And one of them had just done, five years earlier and on a British ship, exactly what the Crown would shortly be accused of.

On 19 November and 5 December 1835 the brig *Lord Rodney*, whose captain had been compelled to the voyage, landed about nine hundred Ngāti Mutunga and Ngāti Tama — men, women and children, driven out of Taranaki in the wars and then out of Wellington — on Rēkohu, the Chatham Islands, seven hundred miles east. They brought seventy-eight tonnes of seed potatoes, twenty pigs and seven waka. The Moriori who met them, a people descended from the same Polynesian settlement, who had lived on the islands for some centuries under Nunuku's covenant forbidding killing, received them, fed them, and nursed the sick off the crossing. Then the newcomers began to *takahi*, to walk the land, claiming what they walked over according to their own tikanga. The Moriori assembled about a thousand men at Te Awapatiki and resolved to keep the covenant. Somewhere between two hundred and sixty and three hundred were killed outright, the rest enslaved and forbidden to marry one another; of a population of perhaps sixteen hundred to two thousand, about a hundred and sixty were alive when the resident magistrate proclaimed their release in 1863.

Thirty-five years after the landing, the Native Land Court sat to determine who owned the Chatham Islands. Ngāti Mutunga's case rested on *take raupatu* and on occupation since 1840, and one of its witnesses, Te Rakatau Katihe, who had been there, put the ground of the claim on the record: *"We took possession ... in accordance with our custom, and we caught all the people. Not one escaped. Some ran away from us, these we killed; and others also we killed — but what of that? It was in accordance with our custom."* The Court accepted the case and awarded Ngāti Mutunga and Ngāti Tama 97.3 per cent of the islands, and the Moriori the remaining 2.7 in fragments.

Hold that in view through everything that follows, because it will be needed twice. It establishes, inside the study's own window and beyond argument, that the order the British met was not an innocent baseline but a conquest state doing what conquest states do — which is not a debunking and must never be allowed to function as one. And it establishes something about the instrument the British would build: that a court which took conquest as a root of title, and asked only who was standing on the ground in 1840, was capable of converting the most recent act of violence in a district into a freehold, and would.

What was already arriving

By 1839 the archipelago was not what it had been in 1769. Perhaps two thousand British subjects were living in it — sealers, whalers, timber and flax traders, escaped convicts, deserted seamen, missionaries and their families — clustered at the Bay of Islands, where the beach settlement of Kororāreka served the whaling fleets and had a reputation the Colonial Office had heard about. Māori grew potatoes and wheat and pigs for the ships, ran their own coastal vessels, and in some districts had reorganised much of their economy around the trade.

And they read. This is the fact most likely to be missed by a reader carrying the shape of other colonies, and it will decide Module 4 before Module 4 begins. The Church Missionary Society had been in the Bay of Islands from 1814 and had spent its first fifteen years achieving almost nothing; then it put the language into print. William Colenso landed a Stanhope press at Paihia on 3 January 1835 and had the first item printed in the country — a translation of two of Paul's epistles — out by 17 February. The Māori New Testament followed in 1837 in five thousand copies, then twenty-seven thousand Books of Common Prayer, and by 1840 Colenso had produced over seventy-four thousand books and pamphlets; the Wesleyans printed from Hokianga from 1836 and the Catholics from Kororāreka from 1839. Māori taught each other, in villages the missionaries had never visited: when the missionary George Clarke travelled the Waikato and Hauraki late in 1840 he found a Māori-run school in nearly every

settlement. Estimates put perhaps half the adult population reading and writing to some degree by the early 1840s, and there is a report of five bushels of potatoes being offered for a single book of a hundred and seventeen pages.

So the trusted-information position in this country was already occupied when the Crown arrived, and it was not occupied by the Crown. It was held by a body of missionaries who had earned it over twenty-five years, who held the only press and the only orthography, who were the only people in the islands who could put an English idea into Māori, and several of whom were about to spend the rest of their lives fighting what the settlers did with the country. Whatever Britain was going to say to Māori in 1840, it was going to have to say through them.

Landscape II — the kingdom that did not want it

A power that did not want the country

Britain in 1839 was at a particular moment in its own moral history and the moment is not decoration. Slavery in the empire had been abolished in 1833 and the apprenticeship system wound up in 1838, at a cost to the Treasury of twenty million pounds; the evangelical and humanitarian interest that had carried abolition was at the height of its influence and looking for its next object. It found one. A Select Committee of the House of Commons on Aborigines, sitting from 1835 under Thomas Fowell Buxton, had reported on what British settlement had done to indigenous peoples from the Cape to Van Diemen's Land, and the Aborigines Protection Society was founded in 1837 to keep the pressure on. The Colonial Office itself was run, at the permanent level, by James Stephen, an evangelical abolitionist who drafted the crucial instructions in this story and whose settled view was that Britain should stay out.

That view is on the record in the founding document of the colony. Lord Normanby's instructions to Hobson of 14 August 1839 state that ministers had deferred to the 1836 committee and had concurred with it *"in thinking that the increase of national wealth and power promised by the acquisition of New Zealand would be a most inadequate compensation for the injury which must be inflicted on this Kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government."* And then: *"We retain these opinions in unimpaired force, and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance."*

This is not a robe being cut. It is a genuine constraint operating on men who believed what they were writing, and the collection's discipline requires it to be read as such: a colonial instrument is frequently more elaborate, more scrupulous and more genuinely binding than a simple seizure would have needed to be, and the elaboration is the measure of the constraint. New Zealand produced the most elaborate founding instrument in this corpus. The reason is on this page.

The man of war without guns

What Britain had actually placed in the islands in the meantime was one man with no means. James Busby arrived at Waitangi in 1833 as British Resident, without troops, without a ship, without jurisdiction over anybody, and without any power to arrest, try or punish a British subject; a Ngāpuhi chief is supposed to have described him as a man-of-war without guns, and whether or not the phrase is exactly his, it is exactly right. What Busby had was a house, a reputation, and the capacity to convene. He used it. In March 1834 he assembled northern chiefs to choose a flag, so that vessels built in New Zealand could be registered somewhere; and in October 1835, when a French adventurer, Charles de Thierry, announced his intention to establish himself as sovereign chief of an independent Hokianga, Busby convened them again and produced a declaration.

The company that forced the pace

The thing that actually moved the Colonial Office was neither the French nor the missionaries but a company. The New Zealand Company was formalised in London on 2 May 1839 on Edward Gibbon Wakefield's theory of systematic colonisation — buy cheap from the natives, sell dear to emigrants at a price high enough to keep labourers labouring for a few years before they could buy in, and use the margin to fund the passage of more. It dispatched the survey ship *Tory* in May 1839, before it had any charter, any land, or any authority.

The sequence that followed is worth setting down in order, because the order is the argument. On 1 June 1839 the Company sold Wellington sections in London, and they sold rapidly. On 20 September the *Tory* reached Port Nicholson. On 27 September Colonel William Wakefield executed a deed with sixteen or so Te Āti Awa and associated chiefs, from which the Company would eventually claim some twenty million acres in the lower North Island and the upper South — close to a third of the country. On 22 January 1840 the first emigrant ship, the *Aurora*, arrived at Port Nicholson with settlers expecting surveyed sections. Hobson reached the Bay of Islands a week later.

The land had been sold four months before it was bought, and the buyers were at sea before the deed was signed. Whatever else the Treaty of Waitangi was, it was a response to that fact. Nor was the Company alone: to the north, some eleven hundred private claims covering around 2.2 million acres had been lodged on the basis of pre-1840 transactions, of which the commissioners appointed to investigate them would eventually judge about five hundred thousand acres to have been genuinely sold.

The despatch

Which brings the two landscapes into one document. Normanby's instructions of 14 August 1839 are the single most useful text in this study, because everything the colony would spend a century doing is described in them in advance, by a man who thought the enterprise unjust, in the same breath as the disclaimers.

He acknowledged the country's independence and qualified the acknowledgement in the same sentence: *"we acknowledge New Zealand as a sovereign and independent State, so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous dispersed and petty tribes, who possess few political relations to each other, and are incompetent to act or even to deliberate in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown."* He forbade seizure: the Queen *"disclaims for herself and her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the dominions of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained."* And he explained why the natives would be better off consenting, in a clause that performs the whole operation grammatically before Hobson has left the Thames: the benefits of British protection would more than compensate them *"for the sacrifice by the Natives of a National independence which they are no longer able to maintain."*

Then he set out the machine. Hobson was to proclaim that no title to land would be acknowledged unless derived from a Crown grant; he was to obtain, by fair and equal contracts, cessions of such waste lands as settlers progressively required; and he was to fund the whole colony out of the difference. *"The re-sale of the first purchases that may be made will provide the funds necessary for future acquisitions, and beyond the original investment of a comparatively small sum of money, no other resources should be necessary for this purpose. I thus assume that the price to be paid to the natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers, nor is there any real injustice in this inequality."* The reason there was none, he explained, was that much of the land was of no actual use to Māori and possessed scarcely any exchangeable value in their hands; its

value would be created by the introduction of British capital and settlers, and in that increase the natives would gradually participate. He then instructed that no district be purchased whose retention was essential to Māori comfort, safety or subsistence, and that an officer be appointed expressly to protect them.

Every element of the next fifty years is in that despatch: Crown pre-emption, the land fund, the protectorate, the doctrine of waste land, the assurance that the arithmetic contains no injustice, and the man who is to watch over the interests of the aborigines while it operates. And the reader should resist the temptation to file the whole thing as cant, because the humanitarian clauses are not decoration either — they are why there would be a treaty at all, why there would be protectors, and why the metropole would keep intervening in the colony's affairs for another twenty-five years. Both halves came out of the same office in the same week from men who did not think they were in contradiction. Working out why they did not is much of what this study is for.

He Whakaputanga

On 28 October 1835, in Busby's house at Waitangi, thirty-four northern rangatira signed a declaration; eighteen more added their marks over the next four years, including Te Hāpuku of Hawke's Bay and the Waikato chief Te Wherowhero, who would be raised as the first Māori King in 1858. Busby drafted the English; the Reverend Henry Williams of the Church Missionary Society made the Māori text, and Eruera Pare Hongi, a relative of Hongi Hika, wrote out the fair copy that was signed. It is the last constitutional act of the order described above, and it was framed to be read in London.

Its second article, in the text the chiefs signed:

> *Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga, a ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tireni, ko nga tangata anake e meatia nei e matou e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga.*

And in Busby's English:

> *All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare*

> *that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.*

The correspondences are worth setting out flatly, without comment, because they are the vocabulary that existed in the country in October 1835 and the man who chose it would be asked to choose again. *Independence*, in the document's own title and its first article, is *rangatiratanga*. *All sovereign power and authority* is *te kīngitanga* and *te mana*. *Any function of government* is *tetahi kāwanatanga*. The three words are distinguished, and the distinction is doing work: the chiefs are declaring that the *kīngitanga* and the *mana* are theirs alone, and that no *kāwanatanga* shall be established in their territory except by their appointment.

The Colonial Office received it without enthusiasm and, in May 1836, formally acknowledged it. Four years later the same Secretary of State's office would describe the people who had assembled to produce it as *incompetent to act or even to deliberate in concert*.

Reading the ground against the framework

Three things this landscape asks the framework to carry, of which one is a revision and two are settings that later modules will need.

The revision concerns the speed of formation, and it is the contribution this study opens with. The collection has held that an order reaches the cheap, self-running pole — the point at which the governed hold it up themselves and force withdraws to the margins — only through deep formation and the time formation needs, "sometimes most of a thousand years," with Christendom, the Sunni synthesis and the Mandate of Heaven as the type cases. Aotearoa reached it in about twenty generations. By 1769 the order had no visible enforcement apparatus at all above the hapū, no apex, no standing coercion, and it was held completely: a person's rank, his obligations, what was sacred, what a good man did and whose word he took were installed before he could weigh any of it, and there was nothing in his world that suggested any of it was contingent.

The reason it went fast is not that the formation was more intense but that nothing competed for the child. Formation works on the ordinary cognitive equipment of a trusting animal: a mind that cannot verify a world this size and therefore reads *cues* — the marks of competence, the deference others already pay, the visible costly conviction of its elders — and takes the marked source on trust because that is the only way any

human being has ever known anything. That machinery is not defeated by an alternative; it is *fed* by one. Where a rival order stands within sight, the child meets a second set of marked sources, and every one of them is evidence that the first set had an outside. Christendom took a millennium in part because it always had visible competitors at its edges. Aotearoa had none. Whatever return voyaging the first generations managed, it had ceased long before contact; there was no traffic, no rival court on any horizon, no second collar anywhere. So the field of the visible closed, and the order inside it was not a claim that could be doubted but the shape of the world.

Which suggests the variable is not elapsed time at all but **the number of competing claimants for the child's attention**, with elapsed time only a rough proxy for it. State it that way and it predicts in both directions: an isolated order should naturalise in centuries rather than millennia, and an order that has naturalised in isolation should be unusually exposed when a rival arrives, because it has never had to answer one. A press, an alphabet and a new god arrived in the Bay of Islands in the 1830s and moved through the north in fifteen years, which is not the behaviour of a population being fooled. It is the behaviour of vigilance encountering, for the first time in five centuries, a second marked source — and finding it competent.

The second is the setting on the chair, and it is negative. The Māori order vested the power to make and unmake its elite nowhere: not in a bloodline that could be married into, not in an office that could be entered, not in a creed with a hierarchy that could be suborned. Mana was earned and lost in front of witnesses, and a rangatira's authority ended where his following did. There was, therefore, no seat for a stranger, and no mechanism by which any Māori could deliver the country to anybody, because no such mechanism existed for Māori either. That is the same finding the Kikuyu case produced, and it usually predicts what Kenya did: forge an apex, and pay the running costs of the forgery in passes, police and camps forever. New Zealand did not do that. What it built instead was a court — and a court, unlike a chief, does not need anyone to obey it in order to produce a document. Whether that substitution is a seventh answer to the coordination problem or a variant of one already named is a question for the module on the hierarchy, but the absence that provoked it is established here.

The third is that the seam was already held, and not by the conqueror. The trusted-information position in the north in 1840 was occupied by the Church Missionary Society, which had the language, the orthography, the only press, twenty-five years of earned credit, and the personal confidence of the chiefs. Britain did not need to forge a channel or destroy one and refill the vacancy; it could redirect a working channel, which is the cheapest of the three ways this leg is ever acquired. But the redirection came with a defect the cheap route usually carries and which is worth

flagging now: the men holding the channel had earned their standing on their own account and for their own purposes, and several of them would spend the rest of their lives using it against the Crown's settlers. A conqueror who borrows another man's credit has borrowed another man's judgement with it.

And one discipline to hold, stated once, for everything that follows. Naming the Polynesian settlement a conquest and the Musket Wars a war of expansion and Rēkohu a massacre is not a debunking of the Māori order and must not be permitted to become one. A built thing that becomes real is more genuine and more durable than a lie could ever be, and by 1840 that order was authentically the world of the people living in it, held with the whole weight of conviction that five hundred unopposed generations of formation confer. That it had an origin in fire and taking makes it exactly like every other order in this collection, including the one that was about to arrive. It does not make it count for less. The reason to establish the origin is not to discount the claim but to be able to read what happened next without the sentimental machinery that makes the reading impossible — which is that two conquest orders met in the Bay of Islands in 1840, one of them five centuries old and running on its own conviction, the other three weeks off the boat and running on paper.

A note on sources. Quoted exactly from public-domain primary texts: the Marquess of Normanby's instructions to Captain Hobson, 14 August 1839, for the passages on the 1836 Commons committee and the injustice of acquisition, on New Zealand as a sovereign and independent state and the tribes as incompetent to act or deliberate in concert, on the free and intelligent consent of the natives, on the sacrifice of a national independence no longer maintainable, and on the resale margin and the absence of real injustice in the inequality — text as reproduced by the New Zealand Legal Information Institute and corroborated across independent reproductions, since the manuscript despatch was not consulted; and He Whakaputanga o te Rangatiratanga o Nu Tireni, 28 October 1835, articles one and two, in the Māori text signed and in Busby's English, from the transcript published by NZHistory alongside the digitised original. Te Rakatau Katihe's evidence to the Native Land Court in 1870 reaches this study through Michael King's reproduction of the court's minutes in *Moriori: A People Rediscovered* (1989) and is quoted as such, not from the minute book; the Moriori survivor testimony recorded from Minarapa Tamahiwaha is likewise second-hand and is described rather than quoted at length. The Waitangi Tribunal's *Rekohu* report (Wai 64, 2001) covers the Chathams and, like all its district reports, is a finding by an interested body with a statutory mandate and is treated accordingly.

Paraphrased from modern scholarship, briefly and with credit: Angela Ballara's argument in *Taua* (2003) that the fighting of 1818–1840 was intensified customary

taua warfare rather than a discrete European-caused phenomenon, and her downward revision of inflated casualty traditions; James Belich and Matthew Wright on the potato as the logistical enabler of the long-range *taua*; R. D. Crosby's engagement counts; Ian Pool on Māori demography; Simon Chapple's argument that the figure of 100,000 conventionally attributed to Cook in 1769 derives from Johann Forster's published guess of 1778 and rests on no method.

Contested figures, given as ranges. Pre-contact population: no reliable figure exists; Pool has revised downward across forty years from 125,000–175,000 (1977) to 80,000–100,000 (2015), while others argue for 150,000–200,000 or more, and the honest statement is that the plausible range runs from roughly 80,000 to 200,000. Musket Wars deaths: around 20,000 is the conventional figure, with a range to about 40,000 from direct and indirect causes; 30,000–40,000 more enslaved or displaced; older claims of 60,000–80,000 are rejected. Engagements: from over 500 to as many as 3,000, depending on the counting rule. Rēkohu: a Moriori population of about 1,600–2,000 in 1835, some 260–300 killed in the invasion itself, about 160 alive in 1863; the cumulative death figure of 1,561 that circulates is not independently established here. Settlement date: 1250–1300 by convergent evidence, with the Kaharoa tephra dated to AD 1314 ± 6. Moa extinction: within roughly 150 years of arrival, conventionally 1400–1450. Forest: over 80 per cent cover before human arrival, about 6.7 million hectares cleared by 1840. Māori literacy in 1840: no census exists; the estimate that about half the adult population read and wrote to some degree by the early 1840s is a scholarly reconstruction from missionary reports and should be treated as such.

Outstanding verifications, flagged by name. The drafting order of He Whakaputanga is disputed in the official sources: NZHistory states that Busby drafted the English and Henry Williams translated it into Māori, while Te Ara states that the document signed was in Māori and that an English translation was made whose quality it criticises; this study follows the NZHistory account and the disagreement is unresolved. The attribution of the phrase "a man-of-war without guns" to a Ngāpuhi chief describing Busby is traditional and has not been traced here to a contemporary source; it is used as a description and not as a quotation. The claim that long-distance voyaging between Aotearoa and tropical East Polynesia had ceased well before contact is the standard archaeological position but has not been independently verified for this module.

MODULE 1

Forty Pounds a Year for an Infantryman

The floor of force: a treaty signed by a man with no soldiers, a first war the Crown could not win, an army rented from the Empire by the head, and the instrument that replaced it with men who held the ground because it had been given to them

The founding with no floor

On the morning of 6 February 1840, at Waitangi in the Bay of Islands, the entire armed strength of the British Crown in New Zealand consisted of the ship's company of HMS *Herald*, riding at anchor, and a handful of officials appointed in Sydney the month before. There were no soldiers. Not a reduced garrison, not a token detachment — none. The first British troops to land in the country, a detachment of the 80th Regiment under Major Thomas Bunbury comprising three other officers, eighty-four other ranks, a commissariat officer and a storekeeper, sailed from Sydney aboard HMS *Buffalo* on 5 April and arrived on the sixteenth, ten weeks after the Treaty had been signed. They were sent because Governor Gipps in New South Wales heard that Hobson had suffered a stroke, not because anyone had planned a garrison.

Set that against the population. At the end of 1840 there were something on the order of two thousand non-Māori people in New Zealand and somewhere between seventy and ninety thousand Māori, in a country the size of the British Isles, most of them within living memory of twenty years of continuous warfare and a great many of them holding muskets they had fought hard to acquire and had no intention of surrendering. Whatever Hobson obtained at Waitangi, he did not obtain it by force, and he could not have. He could not have compelled a single hapū to do anything. He could not have defended Kororāreka. If every chief in the north had declined to sign, there was nothing whatever he could have done about it.

This is the first fact of the case and it inverts the ordinary reading of a colonial founding. The collection's sharpest diagnostic runs the other way: force never pays for what it does not need, so an apex that already holds uncontested violence and *still* spends real, avoidable effort acquiring legitimacy has revealed that some audience's belief was genuinely load-bearing. Here the diagnostic runs at full strength in reverse. Britain paid an extraordinary price in legitimacy-work — a negotiated instrument, in the conquered's own language, explained in public over two days at Waitangi and then carried by ship and on foot to some fifty locations over seven months to gather around

five hundred and forty signatures — because it had no force at all and every part of the arrangement had to be bought with consent. The elaboration of the Treaty is not evidence of unusual British scruple, or not only that. It is the exact measure of British weakness in February 1840.

And it means the founding act of this order was not a conquest. It was a document, obtained by persuasion, from people who could have refused. The conquest came later, was fought against a fraction of the population, was never finished, and — this is the part the standard account tends to lose — was for most of its duration fought with an army the colony rented and a large body of troops recruited from the conquered themselves.

What was proclaimed, and on what grounds

The gap between the document and the claim opened within fifteen weeks, and it opened because of settlers rather than Māori.

In March 1840 the New Zealand Company's colonists at Port Nicholson, having arrived a week before Hobson and having no interest in his authority, constituted a council and began governing themselves. A ship's captain brought the news to Hobson on 21 May. He called it usurped authority and something close to treason, and the same day he issued proclamations of the Queen's sovereignty over the whole country.

The grounds are worth setting down precisely, because they do not agree with each other. Sovereignty over the North Island was proclaimed on the ground of cession by the chiefs, and in the despatch that accompanied it Hobson cited their *universal adherence* — at a moment when he physically held two signed sheets of the Treaty, one from the north and one from Waikato Heads and Manukau, with signatures still being sought and the last not obtained until 3 September. The North Island proclamation was made retrospective to the signing, which Hobson misdated to 5 February. Sovereignty over the South Island and Stewart Island was proclaimed on an entirely different ground: right of discovery, by Captain Cook, in 1769 — that is, on a basis that made the Treaty irrelevant, and which Hobson chose because he doubted the southern Māori were capable of treating at all. He then had to reissue the southern proclamation because the first copy sent to London omitted the ground.

Meanwhile his deputy Bunbury was at sea with the Treaty and had heard none of this. On 5 June he proclaimed sovereignty over Stewart Island by right of discovery, no Māori being found there to sign; and on 17 June, at Port Underwood in Cloudy Bay, he proclaimed sovereignty over the South Island by right of *cession*, several chiefs having signed. So within four weeks the Crown claimed the same islands on two mutually exclusive grounds, one of which held that the inhabitants had sovereignty to cede and

the other that they did not. The Colonial Office approved both, and publication in the *London Gazette* on 2 October 1840 completed, by the standards of the day, the acquisition of a country.

None of this was concealed and none of it was thought scandalous. That is the point worth holding. A proclamation is a decree that presents itself as a discovery: it does not propose that New Zealand become British, it reports that New Zealand is British and always was, from a date in February that the author got wrong. The men issuing it were improvising under pressure, six months from instructions, against a private company they regarded as a menace, and they reached for whichever ground came to hand for each island. What they produced is the founding legal fact of the state, and it was assembled out of two incompatible theories by two men who could not consult each other.

Heke's flagstaff

The floor arrived, when it arrived, as a response to a challenge the Crown could not meet.

The flagstaff on Maiki Hill above Kororāreka had been a gift from Hōne Heke to James Busby. Heke was the first signatory of the Treaty and had asked Hobson to stay and be like a father to them; he and his people had prospered on the shipping trade, and the Treaty was expected to make that prosperity permanent. Then the capital moved to Auckland in 1841, the whaling trade shifted, customs duties bit, and the promised benefit did not arrive. Heke cut the flagstaff down in July 1844, and again on 10 January 1845, and again the day after it was re-erected. Governor FitzRoy put a hundred-pound bounty on him and clad the new staff in iron behind a blockhouse. Before dawn on 11 March 1845 Heke and Te Ruki Kawiti attacked in three parties: Kawiti's men engaged the marines and sailors below as a diversion, Heke took the blockhouse and the flagstaff, and by evening — after a powder magazine exploded and the town was shelled from HMS *Hazard* — New Zealand's fifth largest town was a ruin and its surviving inhabitants were aboard ships bound for Auckland. Nineteen or twenty Europeans were killed. Heke had given orders that the southern end of the town, containing the mission houses and the church, was not to be touched, and it was not.

What followed over the next ten months is the most instructive military record in the case, because the Crown lost most of it. At Ōhaeawai on 1 July 1845, Colonel Henry Despard threw a six-hundred-strong force of soldiers, seamen and militia at a pā Kawiti had rebuilt specifically to absorb artillery and enfilade an assault, and lost forty-one men killed in a few minutes. At Ruapekapeka over Christmas and into January

1846 the British brought sixty-eight officers and eleven hundred and ten men, with naval guns, against perhaps five hundred defenders, and took an abandoned earthwork after a fight whose circumstances are still argued about. Then it ended — not in a victory but in an arrangement. Heke and Kawiti made peace with the rival Ngāpuhi leaders at Kawakawa. No Ngāpuhi land was confiscated. Governor Grey, who had every reason to want a rapid conclusion because settlers were fleeing Auckland, chose not to re-erect the flagstaff, and it did not go back up in Heke's lifetime.

A founding conquest whose first war ends with the conqueror declining to raise his own flag over the site of his defeat is not a conquest in the ordinary sense, and the record should be allowed to say so.

But the deeper feature of the Northern War is the composition of the force. This was not Britain against Ngāpuhi. It was two factions of Ngāpuhi fighting each other, with the British attached to one of them. Tāmati Wāka Nene, Eruera Maihi Patuone, Mohi Tāwhai and Makoare Te Taonui had vouched for Heke's conduct at the Waimate hui and had put their own mana behind that promise; when Heke broke it, they went to war against him partly to recover what he had cost them. Nene held Te Ahuahu against Heke in June 1845 in a battle at which no British soldier was present, and Heke was badly wounded in it. At Ruapekapeka four hundred and fifty Māori fighters stood with the British column — better than a quarter of the force in the field.

That proportion, established in the very first engagement of the wars, held for the next twenty-five years, and it is the single most important structural fact about this floor.

The floor that was rented

From 1847 the Imperial Government decided to maintain two thousand regular troops in the colony, and there matters rested for a decade. Then the settler population grew — roughly two thousand in 1840, around fifty-nine thousand by 1858 — and the demand for land grew with it, and in 1858 Waikato and its allies raised Pōtatau Te Wherowhero as King and drew a line at the Mangatāwhiri that land-selling and land-buying were not to cross. In March 1860 fighting began at Waitara in Taranaki over a disputed purchase. In July 1863 Governor Grey issued an ultimatum to the chiefs of Waikato, and on the twelfth — before the message had reached them — Lieutenant-General Duncan Cameron's troops crossed the Mangatāwhiri.

The invasion of Waikato was the largest colonial military operation of its era in the southern hemisphere. Figures vary with the counting rule and none is exact: something like twelve thousand imperial troops were eventually available to Grey along with four thousand colonial soldiers and a few hundred kūpapa, and the peak total in the field is

usually given as about fourteen thousand in March 1864 — nine thousand imperial, over four thousand colonial, several hundred Māori. Against them the Kīngitanga could put fewer than five thousand part-time fighters, drawn from more than half the major North Island tribal groups, feeding and supplying themselves. At Rangiriri in November 1863 some fourteen hundred British regulars with three cannon and two gunboats faced about five hundred defenders. The Crown had steamers on the river, a metalled military road built from Auckland for the purpose, and a commissariat.

And the colony was paying by the head. Under the arrangement then in force New Zealand was charged an annual capitation for the imperial troops it used — forty pounds a year for an infantryman, seventy for a gunner. That is the fact from which the rest of this module follows, and it should be read for exactly what it is: the floor of force in New Zealand in the 1860s was not the colony's own. It was rented, at a stated rate, from a landlord who could give notice.

The floor recruited from the ruled

Before coming to the notice, the other half of the force has to be counted honestly, because it is where this case departs most sharply from the rest of the shelf.

A substantial part of the Crown's fighting strength throughout the wars was Māori. The word attached to them, *kūpapa*, had originally meant neutral and came to mean something like Queenite, and it flattens a range of positions that the historian James Belich sorted into three quite different kinds. At one end were groups with settled reasons to back the government: Ngāpuhi, which the demographer Ian Pool estimated at something near forty per cent of all Māori in 1840, met under Tāmati Wāka Nene in the Hokianga in 1863 and resolved to support the Crown against Waikato — their lands intact, their standing with the government good, ceremonial swords and monuments for their dead, and consultation on some questions of policy. At the other end were groups doing something much more instrumental. Ngāti Porou volunteered to campaign against Tūhoe, ancient enemies who had sheltered Te Kooti, on the condition that the Crown arm them; and when the campaign was over they declined to give the guns back, and told Wellington plainly that they would use them against anyone who came for their land. They kept much of their rohe. The iwi at the mouth of the Whanganui had a profitable trade with Pākehā and no wish to see it destroyed by their own upriver relatives. Te Arawa resolved on neutrality and then fought, in April 1864, to stop an East Coast war party crossing their territory to join the King.

None of this is loyalty in the sense the Victorian accounts wanted, and it is not treachery either. It is position logic, run by people who had no apex to bind them, in a country where every hapū decided for itself and the arrival of a well-armed stranger

with a commissariat was one more factor in a calculation that had been running since long before he arrived. The Crown was fighting people's traditional rivals; the Crown could be made use of; and a hapū that had watched twenty years of the musket trade knew exactly what happened to those who fell behind in armament. What the government took for allegiance was frequently a bargain, and in the sharpest cases the price was set by the seller and paid in rifles that were never returned.

The arithmetic of the dead makes the scale plain. The figures are uncertain and should be given as such, but the standard reckoning puts around five hundred and sixty British and colonial troops, around two hundred and fifty kūpapa, and around two thousand Māori fighting against the Crown among the dead of the wars. On those numbers roughly three in every ten men who died on the Crown's side were Māori. This was not an auxiliary contribution at the margins. For long stretches — the pursuit of Te Kooti through four years and more than thirty expeditions, the campaign against Tītokowaru — it was the main body of the Crown's field strength.

Forty pounds a head

Now the notice. In September 1864 the Fox–Whitaker ministry fell, partly over Grey's objection to its confiscation policy and partly because Parliament in London declined to advance the full three million pounds it had asked for. London also made plain that it wanted the remaining imperial regiments out unless the colony paid the capitation in full. South Island members, whose provinces had almost no Māori population and no war, objected loudly to paying for the North Island's campaigns.

In October Frederick Weld took office on a policy he called self-reliance: accept the removal of the regiments, take control of colonial defence, and replace the imperial army with a colonial force of about fifteen hundred and with Māori auxiliaries. His ministers set out the reasoning in a memorandum of 30 December 1864 which a Colonial Office official praised as an excellent state paper. It anticipated the objections — *"There may be partial disturbances, there will be imaginary alarms, the timid and those who have largely benefited by the presence of the troops will raise the usual outcry"* — and then gave the ground on which the ministry was prepared to let the army go: the Waikato, it observed, was by then *"occupied by no less than 2,500 military settlers, armed, organized and capable of self-defence."*

The withdrawal took longer than intended because fighting broke out again in Taranaki and on the East Cape and because Grey obstructed Cameron's first attempts to embark regiments in May 1865. But it happened. The first regiment sailed in January 1866; five went that year and four more in 1867; by May 1867 only the 2/18th remained, held back by political agitation about the peril still supposedly facing settlers;

and the main body of the 18th (Royal Irish) departed in February 1870. Fort Britomart in Auckland was being dismantled from January 1869. In October 1867 the Armed Constabulary Act dissolved the Colonial Defence Force and folded its regulars into a new Armed Constabulary — a body that was neither quite an army nor quite a police force and would still be the state's instrument at Parihaka fourteen years later.

Read the decision by its arithmetic and not its rhetoric, because the arithmetic is what moved. The imperial floor was withdrawn not because the country had been pacified — it plainly had not, as Tītokowaru and Te Kooti would demonstrate within three years — but because two parties independently concluded that the price no longer matched the return. London considered that a colony of that population should pay for itself. The colony's own southern half declined to pay forty pounds a head for a war it was not having. The most consequential figure in the story of this floor is not a general. It is whoever prepared the capitation account.

The instrument that replaced the army

Which raises the question the whole module exists to answer, and which the ordinary account of the New Zealand Wars steps over: an order that borrows its floor and then returns it usually falls. This one did not. The imperial regiments left, the country did not revert, and within a decade the colonial state was strong enough to walk sixteen hundred armed men into a village in Taranaki. Why?

Not because of the Armed Constabulary, which was small. The answer is in the ministers' own memorandum: *2,500 military settlers, armed, organized and capable of self-defence*. And the crucial fact about those men is when they were recruited.

Grey and his ministers drew up the confiscation plans **before** the invasion of Waikato, and began recruiting military settlers in August 1863 — that is, within weeks of crossing the Mangatāwhiri and four months before Parliament passed the statute that made confiscation lawful. The scheme was to enlist five thousand men on the Australian and Otago goldfields, on the promise of a free grant of land to be taken from Māori judged to have rebelled; by the end of October 1863 more than two thousand six hundred had enrolled as the Waikato Militia. On 3 December 1863 the New Zealand Settlements Act and the Suppression of Rebellion Act were passed on the same day, the first authorising the taking of land from any tribe or section of a tribe deemed to have engaged in open rebellion against Her Majesty's authority, the second providing for trial by court-martial and summary execution. Grey's ultimatum of 9 July had already stated the terms to Māori north of the Mangatāwhiri: take the oath of allegiance and give up your weapons, or forfeit *"the right to the possession of their lands guaranteed to them by the Treaty of Waitangi."*

The design is visible in the sequence and it is not subtle. Confiscation was not a punishment devised after the war; it was the war's financing and its garrison, planned in advance. Vincent O'Malley's reading, which the record supports, is that the presence of military settlers on part of the seized land would make the conquest permanent while the sale of the rest on the open market would pay for the whole undertaking — so that Māori would underwrite the cost of their own suppression. The Waikato confiscation initially covered 1,202,172 acres, of which about 314,364 were later returned, leaving 887,808; across all districts something like a million hectares was taken at first, some of it subsequently given back.

And here is the mechanism that answers the question. A rented army costs forty pounds a head every year and goes home when you stop paying. A granted farm costs nothing per annum and does not go home, because the man on it is not being paid to hold the ground — he *owns* the ground, on a title issued by the government that took it, and if the arrangement collapses he loses everything. The colony did not replace its imperial floor with a cheaper army. It converted the floor from a wage into a title, and thereby stopped having to fund it at all.

Two honest complications belong on the page beside that. The first is that the yeoman garrison partly liquidated itself: many military settlers had no capital and no farming experience, were seated in active war zones, and sold their sections cheaply and left as soon as they were able — with Auckland speculators, among them Frederick Whitaker and Thomas Russell, who as ministers had been the confiscation policy's leading advocates in 1863, buying up a great deal of what they abandoned. The individual soldier-farmer often failed. But the mechanism did not, because what it needed was not that a particular man hold a particular acre but that the acreage pass into settler title and stay there, which it did; the land became the basis of the pastoral economy and the population that grew on it had, by 1870, no need of imperial regiments to keep it.

The second is that a good many British officers, Cameron among them, came to dislike what they were being asked to do, and said so — querying why imperial soldiers should fight a war of conquest for the exclusive benefit of colonial land interests. That objection is not an embarrassment to this reading. It is part of why the regiments went home.

Reading the floor of force against the framework

The revision this module makes is about how a borrowed floor is retained, and it is a variation on a rule the framework already holds. The collection's account of the modern colonial settlement is that it hands an elite land, office and salary in

exchange for tax collection and political compliance, *with the military-service clause deleted* — because a grant that buys armed service leaves a rival with a retinue, and the whole modern move is to pay a warlord to stop being a warlord. That rule was derived from cases where the grantees were the conquered. New Zealand runs the same instrument with the clause deliberately restored, because the grantees were the conqueror's own people. Land in exchange for armed service produced no rival retinue here, for the plain reason that the retinue it produced *was the state's* — men recruited on the goldfields, enrolled as militia, seated on confiscated ground, and defending an arrangement that was the source of their own title.

So the rule generalises. **The consideration in a grant determines whether the force it buys can be withdrawn.** A floor paid in wages is a rental and terminates with the payment — which is what happened to Liberia's Frontier Force when the money stopped and to Britain's own regiments here when the capitation was refused. A floor paid in title cannot be terminated, because there is no payment to stop; the holder defends the arrangement by defending his own farm, needing no instruction and no wage and no belief in anybody. This is why the colony survived a withdrawal that should have broken it, and it is the single most transferable thing this case has so far returned. It also means the confiscation statute was never only an extraction instrument. It was the floor's replacement, drafted before the war it punished.

Two settings follow, and both complicate the framework rather than confirming it.

The first concerns who did the fighting. The collection holds, correctly and across many cases, that the ruled are present at every rupture as soldier, crowd and body count but never as the proximate agent of structural change. That holds here. But it does not describe what the kūpapa were, and the case forces a distinction the framework has not needed before. These were not fuel and they were not a co-opted elite either, because no Māori leader could deliver a population — there was no apex and no office through which any such delivery could have been made. What happened instead is that individual hapū *sold* military service to a power that had none, on terms each of them set, and in the sharpest instances the price demanded was armament and the armament was kept. Roughly three in ten of the Crown's dead were Māori. So: **where a conqueror arrives without a floor, the conquered can sell him one, and in the absence of an apex the price is set hapū by hapū rather than negotiated once at the top.** That is a different transaction from co-optation and it produces a different residue — not a dependent class with titles, but a set of armed communities holding their land partly because they had proved expensive to fight and useful to hire.

The second is that this founding conquest was never completed, and the framework's ordinary expectations about a founding should be adjusted for it. There was no general disarmament; demands to surrender arms were local, conditional and largely ignored outside the districts under immediate occupation. The first war ended in a negotiated stalemate with the Crown's flag left lying down. The Kīngitanga was not destroyed; Tāwhiao withdrew behind a boundary that stayed closed to the government until the 1880s. Te Kooti was pursued for four years by more than thirty expeditions, never caught, and eventually pardoned. Tītokowaru was never defeated in the field. What organised violence actually achieved in this country between 1845 and 1872 was not the submission of a population — it never obtained that — but the physical occupation of particular districts, which were then converted into freehold title by statute and held thereafter by their new owners.

That is the shape to carry forward. The floor here did not exist to make people obey. It existed to clear ground for an instrument that would do the real work, and the instrument was not a soldier.

A note on sources. Quoted exactly from public-domain primary texts: the New Zealand ministers' memorandum of 30 December 1864 on the withdrawal of imperial troops, for the passages on partial disturbances and imaginary alarms and on the Waikato being occupied by no less than 2,500 military settlers, armed, organized and capable of self-defence, as reproduced by the New Zealand Electronic Text Centre; and Governor Grey's ultimatum of 9 July 1863 warning that those taking up arms would forfeit the right to the possession of their lands guaranteed to them by the Treaty of Waitangi, quoted in the short form given by the Ministry for Culture and Heritage, the full proclamation text not having been consulted here. Hobson's characterisation of the Port Nicholson council as usurped authority, and his citation of the chiefs' universal adherence in the despatch accompanying the North Island proclamation, are reported by Archives New Zealand and are given as reported rather than as verified from the manuscript despatch.

Paraphrased from modern scholarship, briefly and with credit: James Belich's threefold classification of kūpapa by degree and kind of commitment, and his figures for the peak strength of the Waikato campaign; Ian Pool's estimate that Ngāpuhi comprised about forty per cent of all Māori in 1840; Vincent O'Malley on the confiscation plans having been drawn up before the invasion of Waikato and on the military-settler scheme as the mechanism making conquest permanent and self-financing, with its acknowledged precedent in the seventeenth-century plantation of Ireland; Danny Keenan's casualty reckoning as published by Te Ara.

Contested figures, given as ranges or with their uncertainty stated. Peak strength in the Waikato campaign: about 14,000 in March 1864 on Belich's reckoning (roughly 9,000 imperial, over 4,000 colonial, several hundred kūpapa), with other accounts giving 12,000 imperial available to Grey and totals stated as high as 18,000; the higher figures appear to aggregate across the campaign rather than at one moment and are not used here. War dead: approximately 560 British and colonial troops, 250 kūpapa and 2,000 Māori fighting against the Crown, all explicitly uncertain in the source; the derived statement that roughly three in ten of the Crown's dead were Māori inherits that uncertainty. Non-Māori population 1840: about 2,050. Māori population 1840: estimates cluster at 70,000–90,000, within the wider and genuinely unresolved range for the contact era. Treaty signatures: around 540 in total across some fifty signing occasions, with the last obtained on 3 September 1840. Waikato confiscation: 1,202,172 acres initially proclaimed, about 314,364 acres returned, 887,808 acres finally taken; about one million hectares confiscated across all districts initially, some later returned. Military settlers: 5,000 planned, more than 2,600 enrolled by the end of October 1863, 2,500 stated to be in occupation of the Waikato in December 1864. Imperial capitation: £40 per annum per infantryman, £70 per gunner.

Outstanding verifications, flagged by name. The date of the final imperial departure is given as February 1870 by Te Ara and by the standard regimental accounts and is used here; at least one specialist source states February 1869, and the discrepancy is unresolved. The composition of Bunbury's detachment (three officers, eighty-four other ranks, one commissariat officer, one storekeeper) comes from a genealogical compilation of shipping and regimental records rather than from a muster roll and should be treated as approximate. The circumstances of the fall of Ruapekapeka on 11 January 1846 — in particular whether the pā was largely unoccupied because the defenders were at Sunday prayer — have been disputed for a century and a half and no view is taken here. The Ngāti Porou episode of demanding arms as the condition of service and then refusing to return them is well attested in outline but is drawn here from a secondary account and has not been traced to a departmental record.

If the Native Chiefs Do Not Know the Contents

The settlement: what each party was given and in which language, the word that carried the whole arrangement, and the three later instruments that reopened the terms after the signatures were dry

What was signed

Two documents exist. They were signed on the same days by the same people and they do not say the same thing.

The English text of the first article has the chiefs *"cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof."*

The Māori text of the first article, which is what nearly every signatory actually put a mark to, reads: *"Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu — te Kawanatanga katoa o o ratou wenua."* The chiefs give up to the Queen of England, forever, the whole *kāwanatanga* of their lands.

The English second article has the Queen confirm and guarantee *"the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon."*

The Māori second article reads: *"Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu — ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua — ki te ritenga o te utu e wakaritea ai e ratou."* The Queen agrees to the chiefs, the hapū and all the people of New Zealand their *tino rangatiratanga* over their lands, their villages and all their treasured things; but the

chiefs give to the Queen *te hokonga* of such lands as the owner wishes to dispose of, at a price agreed between them.

The third article is the one on which the two texts substantially agree: the Queen extends her protection and imparts to Māori *"all the Rights and Privileges of British Subjects" — "nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani."*

Three things follow from setting the columns beside each other, and only the first is the one usually discussed. The first is that *sovereignty* in the English is *kāwanatanga* in the Māori, and the second is that the thing guaranteed back in the Māori — *te tino rangatiratanga* — is a stronger word than the *possession of lands and estates* it renders. The third gets less attention and did more damage: *the exclusive right of Preemption* is *te hokonga*, from *hoko*, which covers buying and selling alike and carries no sense whatever of exclusivity or of a right surrendered. A chief reading article two in Māori learns that he keeps full chieftainship over his land and that if he wants to sell he deals with the Queen. He does not learn that he has extinguished his ability to deal with anybody else, and that the Queen will therefore set the price. That clause, not the sovereignty clause, is the settlement's engine, and it is the clause that reads most innocently in the language it was signed in.

The words that were available

The standard defence of the translation is that Henry Williams, working overnight, had no adequate Māori term for sovereignty and reached for the nearest thing to hand — *kāwanatanga*, built on *kāwana*, the transliteration of *governor* that Bible translators had coined to render the authority of Pontius Pilate in Judaea, and which had since been applied to the Governor of New South Wales. As a description of the linguistic situation this is accurate. As a defence it does not survive the previous document.

Five years earlier the same Henry Williams had translated He Whakaputanga for James Busby, and in that text *all sovereign power and authority* had been rendered *ko te Kīngitanga ko te mana*, *the Independence of our country* had been rendered *te Rangatiratanga o tō mātou wenua*, and *any function of government* had been rendered *tetahi Kāwanatanga* — three distinct terms, held apart, doing three distinct jobs, in a document whose whole point was that the *kīngitanga* and the *mana* belonged to the chiefs and that no *kāwanatanga* would be established without their appointment. Busby was in the room on the night of 4 February 1840 and asked Williams to substitute *whakaminenga* for *huihuinga* so that the new document would echo the old one, which means the 1835 text was physically present during the translation.

So the words existed, the distinctions had been drawn, and the man drawing them was the same man. What changed between 1835 and 1840 is not the vocabulary but

the purpose. In 1835 the document had to assert Māori authority in the strongest terms London would take seriously, and *mana* and *kīngitanga* did that. In 1840 the document had to be signed. And the word that would have made the cession unambiguous was precisely the word the chiefs would not have surrendered — because *mana* was not a legal abstraction to them but the thing a man was, forfeited only by defeat.

What the record does not establish is intent, and this module will not supply what the record withholds. Consider the position instead. Williams had a few hours, a printing deadline, no legal training, twenty-five years of accumulated credit with the men who would sign, and a settled conviction — shared by most of the Church Missionary Society — that a treaty was the only thing standing between Māori and the New Zealand Company. He was not a Crown officer; he was a missionary who believed the Crown's arrival was the lesser evil and who would spend the following decade being denounced by settlers for siding with Māori. A man in that position, asked to render *sovereignty* into a language whose nearest equivalent would kill the agreement, reaches for the word that lets the agreement happen and tells himself, probably sincerely, that the difference will not matter because the Crown means well. The position rewarded the soft word and punished the hard one, and it would have done so whoever held the pen. That observation is not exculpatory and is not meant to be. It is simply the shape of the thing: an instrument whose central ambiguity was produced not by conspiracy but by the ordinary pressure of getting a deal closed, by a man who had demonstrably known the difference five years before.

What was said on the ground

The best record of the two days at Waitangi was kept by the mission printer, William Colenso, who was present, took notes on the spot, and published them in 1890 at the government's own request for the colony's jubilee. It is a partisan document in the sense that Colenso had a case to make and made it half a century after the fact, and the manuscript he worked from does not contain all the material in the printed version; but it is the fullest European account there is, and its central exchange is the reason it matters.

The chiefs who spoke on 5 February were, on Colenso's account, largely hostile. Te Kemara told Hobson to leave: *"You do not give us good things. I say, Go back, go back, Governor, we do not want thee here in this country. And Te Kemara says to thee, Go back, leave to Busby and to Williams to arrange and to settle matters for us Natives as heretofore."* Others put it in terms of who ruled: *"Let the Governor return to his own country ... We are not whites, nor foreigners ... This country is ours ... we are the Governor*

— *we, the chiefs of this our fathers' land."* Marupo and Ruhe spoke at length against signing, running up and down, stamping, Marupo stripped to the waist and continuing until he was exhausted — and then both of them came to the table and signed. The Catholic bishop had left before any signing and had told Te Kemara not to write on the paper, because if he did he would be made a slave; Te Kemara reported this, and signed anyway. What happened between the hostile speeches of Wednesday and the signing on Thursday morning happened in the Māori camp overnight, and nobody wrote it down.

Then, as Hōne Heke was called forward to be the first signatory, Colenso interrupted the proceedings.

> *Mr. Colenso: "May I ask your Excellency whether it is your opinion that these Natives understand the articles of the treaty which they are now called upon to sign? I this morning—"*
> *The Governor: "If the Native chiefs do not know the contents of this treaty it is no fault of mine. I wish them fully to understand it. I have done all that I could do to make them understand the same, and I really don't know how I shall be enabled to ..."*
> *Mr. Colenso: "... It is no easy matter, I well know, to get them to understand — fully to comprehend a document of this kind; still, I think they ought to know somewhat of it to constitute its legality. I speak under correction, your Excellency. I have spoken to some chiefs concerning it, who had no idea whatever as to the purport of the treaty."*
> *Mr. Busby: "The best answer that could be given to that observation would be found in the speech made yesterday by the very chief about to sign, Hoani Heke, who said, 'The Native mind could not comprehend these things: they must trust to the advice of their missionaries.'"*
> *Mr. Colenso: "Yes; and that is the very thing to which I was going to allude."*

Three men, in ninety seconds, laid out the entire structure of what was happening. Colenso raised the defect. Hobson conceded it and said, accurately, that he had done what he could. And Busby answered it with the fact that resolves everything about the seam in this country: the chiefs were not verifying the document, they were trusting the missionaries, and the missionaries were telling them to sign.

That is not a story about credulity. It is what any person does with a technical instrument he cannot audit — he checks whether the source he is relying on is competent, has been reliable before, and has no interest in deceiving him. On all three tests the Church Missionary Society passed. They had been in the Bay of Islands for twenty-five years, they had given the language its writing and printed seventy-four

thousand items in it, they had frequently sided with Māori against Pākehā, and they were about to go on doing so. Heke's remark is not an admission of stupidity; it is a correct description of a division of labour. The trouble is that the trusted source was itself giving an assurance it could not underwrite, and would spend the next thirty years discovering that.

At Kaitāia on 28 April, sixty-one of Te Rarawa signed after Nōpera Panakareao — who had spent the previous evening at the missionary Puckey's house going over article one — summed the arrangement up for them from the veranda. The recorded English is that *"the shadow of the land will go to the Queen, but the substance will remain with us."* The Māori is transmitted in several forms and no single wording can be given as authoritative. Within about a year, according to the missionary Richard Taylor, he had turned it round: now he feared the substance would go to the British and the shadow only would be the Māori portion.

Panakareao's reversal is often quoted as a moral, and it works better as a measurement. He was not a fool and he was not deceived by a document he had not read. He had read it, had it explained by a fluent translator he trusted, discussed it for a night, and reached a considered view of what it meant — a view that the government's shadow would fall across a substance that remained his. What changed in twelve months was not his understanding of the words. It was the world the words operated in. And there is a detail from his own life that shows how quickly the ground was moving: in January 1840, a month before Waitangi, Panakareao had sold Richard Taylor a thirty-five-mile stretch at Muriwhenua for goods and money totalling £260, and Te Aupōuri — whom he had driven off that land some twenty years earlier — told Taylor that Panakareao had no right to sell it. The disputes that would occupy the courts for a century were already running before the Crown arrived to adjudicate them.

Who the settlement actually paid

Now set the accounting out, because it is the point of the module and it is not where the usual argument puts it.

The Crown obtained *kāwanatanga*, and — far more consequentially in the first decade — the exclusive right of pre-emption. Māori obtained a guarantee of possession, the rights of British subjects, and the extinction of their ability to sell to anyone but one buyer. The settler obtained nothing under the Treaty, is not a party to it, is barely mentioned in it, and gave up nothing. And the settler is the beneficiary.

The mechanism is the one Lord Normanby had described in writing six months before anybody signed anything: the Crown would buy from Māori and re-sell to settlers, the difference would fund the colony, and the price paid to Māori would bear

an exceedingly small proportion to the price the same land fetched on re-sale, in which there was said to be no real injustice because the value was created by the settlers' arrival. Pre-emption is what made that arithmetic possible. A monopsony has no market price; it has an administered one.

The margin arrived promptly. By 1844 the Crown had spent on the order of four thousand pounds acquiring land from Māori and taken something like forty thousand pounds selling it on — a figure that reaches this study through a public-broadcast history and has not been checked against the colonial land returns, and which should be treated as indicative rather than exact. Whatever the precise number, the ratio is not in dispute and it is the ratio Normanby predicted.

And here is the difficulty that makes this settlement worth studying rather than merely denouncing. Pre-emption genuinely *was* a protection. In the four years before 1840 private buyers had lodged claims to some 2.2 million acres in the north on transactions of every degree of validity, and the New Zealand Company had sold Wellington sections in London before it had bought them. A rule that no land could pass except through the Crown stopped that, and it stopped it because it was designed to. The missionaries pressed for it. The humanitarians in London pressed for it. It was, in the plainest sense, the pro-Māori clause. It was also the clause that funded the state out of the difference between what Māori were paid and what settlers paid, and the same officials held both understandings at once without embarrassment, because both were true.

That is the shape to hold. The fiction in this settlement is not a false claim of consent. Consent was real, obtained in public, over two days of argument, from people who could have refused and in several districts did. The fiction is in the character of the consideration: an instrument described to the conquered as their shield, which operated as a purchasing monopoly, whose spread paid for a colony they were not party to.

The settlement reopened, three times

A settlement is a set of terms. What happened to these terms over the following twenty-five years tells you what kind of instrument it was.

First, pre-emption was waived when it stopped paying. By 1843 the colonial administration was close to insolvent — land purchases needed capital the Treasury did not have, and land could not be re-sold until it had been bought. Governor FitzRoy therefore waived the Crown's right of pre-emption, permitting settlers to buy directly from Māori on payment of a fee, first at ten shillings and then, under what became known as the penny-an-acre proclamation, at a penny; something like ninety thousand

acres passed under the waiver. His successor Grey reversed it, and the courts eventually sorted out the resulting titles, largely in the settlers' favour. Hold the sequence rather than the detail. The clause the chiefs had been told was their protection was suspended, by proclamation, within three years, because the government needed money — and it was restored when the money situation changed. A term that one party can switch off unilaterally when its finances require it is not a term of a treaty. It is an item of policy that happens to appear in one.

Second, the guarantee was converted into a forfeitable privilege. On 9 July 1863, on the eve of the invasion of Waikato, Governor Grey told Māori living north of the Mangatāwhiri to swear allegiance and surrender their weapons, and warned that those who took up arms against the Queen would forfeit *"the right to the possession of their lands guaranteed to them by the Treaty of Waitangi."* Read that sentence slowly. The Treaty's second article is being cited, correctly, as the source of the right — and in the same clause as the thing that can be lost by conduct. On 3 December 1863 the New Zealand Settlements Act made the forfeiture operative for any tribe or section of a tribe deemed to have engaged in open rebellion, and the Suppression of Rebellion Act, passed the same day, provided courts-martial and summary execution for those who assisted. A guarantee that lapses on the guarantor's finding of misconduct is a licence, and the change of category happened in one sentence of an ultimatum.

Third, and decisively, the buyer stopped needing a chief. The Native Lands Act 1862 abolished Crown pre-emption; the Native Lands Act 1865 replaced it and established the Native Land Court, whose statutory task was to ascertain the owners of land held under Māori custom and to issue title. The Court converted customary interests — overlapping, collective, contingent on continuing occupation, held by hapū and not by persons — into individual legal interests held by named individuals. Under the arrangement usually described as the ten-owner rule, a block's title could name no more than ten people, and those people held as absolute owners rather than as trustees for anybody else. The Act also permitted up to five per cent of Māori land to be taken for public works without compensation.

This is the answer to the problem the country had posed from the beginning, and it is the most economical solution in the collection so far. The difficulty for any purchaser in pre-1840 New Zealand was that there was nobody who could sell. Land was not owned in the conveyancer's sense; rights in it were relations among persons, and no rangatira could alienate a hapū's interest because a rangatira's authority ran only as far as his following consented. There was no apex, no office, and therefore no seat a stranger could occupy and no signature that could bind a district. Other colonial administrations facing that void built a chief — appointed him, paid him, backed him

with police, and then spent the rest of the colonial period paying the running costs of keeping a manufactured authority obeyed.

New Zealand did not build a chief. It built a register. And a register solves the problem more cheaply than a chief does, because a manufactured chief has to be *obeyed*, which requires continuous force and continuous surveillance to detect the moment his people stop obeying — whereas a manufactured title only has to be *recorded*, and thereafter every transaction that relies on the record ratifies it. The Court did not need Māori to agree that its findings were just. It needed only that a purchaser and a Land Registry accept a certificate. Ten names on a memorial could convey what no chief could have conveyed, and the ten did not have to be the right ten; they had to be the ten the Court had written down. It was, from the buyer's side, a machine for manufacturing vendors.

The settlement closed

In 1877 the logic reached its terminus. Ngāti Toa had given land at Whitireia near Porirua to the Anglican Church in 1848 on the understanding that a school would be built; no school was built, and in 1850 the Church obtained a Crown grant to the land without the iwi's consent. Wiremu Parata, a member of the House of Representatives, sued. Chief Justice James Prendergast held that the courts could not inquire into native title at all, and disposed of the Treaty in a subordinate clause: *"So far indeed as that instrument purported to cede the sovereignty — a matter with which we are not directly concerned — it must be regarded as a simple nullity."* His reason was stated flatly: *"No body politic existed capable of making cession of sovereignty, nor could the thing itself exist."*

Set that beside the despatch of 14 August 1839, in which Lord Normanby acknowledged New Zealand as a sovereign and independent state so far as such an acknowledgement was possible in favour of a people *"composed of numerous dispersed and petty tribes, who possess few political relations to each other, and are incompetent to act or even to deliberate in concert."*

The same proposition appears twice, thirty-eight years apart, doing opposite work. In 1839 it is a qualification attached to a recognition, uttered by a man who thought the enterprise unjust and who instructed his agent to obtain free and intelligent consent notwithstanding. In 1877 it is the operative rule of law, and its effect is that the consent so obtained created nothing. Note what has and has not happened here. Prendergast did not hold that the Crown's title was defective — his reasoning, pressed, would have that consequence, and he explicitly declines to go there. He held that whatever the Crown's title rested on, it was not something a court would examine. By

1877 it did not need to be. Sovereignty rested on proclamation, occupation, statute and a register; the cession had done its work in 1840 and was no longer load-bearing, and an instrument that is no longer load-bearing can be described as a nullity without the building falling down.

Reading the settlement against the framework

The revision is about who a colonial settlement pays, and it does not fit the model the collection has been carrying. The standing account of a modern colonial settlement is a bargain between conqueror and local elite — land, office and salary in exchange for tax collection and political compliance, with the military clause struck out. Every element of that is absent here. There was no local elite capable of contracting on behalf of anyone, because there was no apex. The instrument was negotiated with the conquered themselves rather than over their heads. And the class that the settlement actually enriched — settlers — was not a party to it, is barely named in it, and surrendered nothing whatever.

So the case forces a different formulation. **The settlement's consideration ran between two parties and its benefit ran to a third, by way of a clause described to the conquered as a protection.** Pre-emption was, simultaneously and without contradiction, the humanitarian provision that stopped the land-sharks and the monopsony that funded the colony out of the difference between the administered price and the market one. This is a more durable design than a payment to collaborators, because it does not require anyone to be bought: there is no elite drawing a stipend, no faction whose loyalty must be renewed, no visible transaction to resent. The margin is invisible because it exists only in the gap between two prices, one of which the buyer sets.

The second finding is the substitution of the register for the chief, and it should be stated as a general proposition. Where a conqueror meets an order with no apex, the standard answer is to forge one, and the standard cost is permanent: a manufactured authority must be obeyed, obedience must be monitored, and monitoring must be paid for forever — which is why an order that has to watch its subjects is telling you its belief never took. New Zealand shows a cheaper answer available when what the conqueror wants is *land rather than obedience*. Forge a title instead. A title needs no obedience; it needs only registration, and a register is self-ratifying, because every mortgage, sale and survey that relies on it thereafter converts the original finding into settled fact. Notice what this predicts and then check it against the previous module: a state using this instrument does not need a large standing force, which is exactly why this colony could let the imperial regiments sail in 1870 with the

dispossession barely half-finished and complete it anyway. The court did the work the army could not.

The third is a caution, and it is directed at the strongest version of the case against the Crown. It would be tidy to conclude that the two texts were a deception and the Treaty a swindle drafted to be misunderstood. The record does not support that and this study will not assert it. What the record supports is narrower and less comfortable: that the unambiguous words existed and had been used by the same translator five years earlier; that the softer words were the ones that could be signed; that the man in charge was told on the morning of the signing that the chiefs might not understand and proceeded, having in his own assessment done what he could; and that the chiefs relied on a body of trusted intermediaries who were giving an assurance they were in no position to guarantee. No lie is required anywhere in that sequence. Every actor in it can be granted good faith and the outcome is unchanged, because the outcome was produced by the positions rather than by the intentions — a translator who needed agreement, a governor with no soldiers and six weeks, missionaries who believed the Crown was the lesser evil, and chiefs correctly assessing that the men who had never yet deceived them were unlikely to be starting now. That is a harder finding than fraud, and it travels further, because fraud requires a fraudster and this does not.

A note on sources. Quoted exactly from public-domain primary texts: the Treaty of Waitangi in both texts, articles one, two and three, the te reo Māori text as scheduled to the Treaty of Waitangi Act 1975 and the English text as published by Archives New Zealand and the Waitangi Tribunal; He Whakaputanga o te Rangatiratanga o Nu Tireni, 1835, for the renderings of *kīngitanga*, *mana*, *rangatiratanga* and *kāwanatanga*; Lord Normanby's instructions to Captain Hobson, 14 August 1839, for the passage on the tribes being incompetent to act or even to deliberate in concert; the exchange between William Colenso, Governor Hobson and James Busby at Waitangi on 6 February 1840, and the speeches of Te Kemara and others, from Colenso's *The Authentic and Genuine History of the Signing of the Treaty of Waitangi* (Government Printer, 1890); Governor Grey's ultimatum of 9 July 1863 on forfeiting the right to the possession of lands guaranteed by the Treaty of Waitangi, quoted in the short form given by the Ministry for Culture and Heritage; and *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) 72 at 78, for the simple nullity passage and for the holding that no body politic existed capable of making cession of sovereignty.

Colenso's account is a primary source with a known defect and is used as such: he wrote from notes taken at the time but published fifty years later, and comparison of the 1890 text with his 1840 manuscript has shown that material — notably footnotes he attributed to Busby — appears in the later version and not the earlier. The exchange

quoted here is the most-cited passage in the work and is treated as reliable in outline; readers should know it reaches us through one witness with a case to make. The phrase *He iwi tahi tātou*, widely attributed to Hobson at the signing, rests on Colenso alone and is not used in this module.

Paraphrased from modern scholarship, briefly and with credit: Michael King on the practical weakness of Hobson's position, having roughly four thousand pounds, thirty-nine officials and a handful of New South Wales police troopers, and on the consequent necessity of Māori consent; the standard account of *kāwana* as a missionary transliteration coined to render the authority of Pontius Pilate; David V. Williams on the reception history of *Wi Parata*; the Dictionary of New Zealand Biography on Panakareao's January 1840 sale to Richard Taylor and Te Aupōuri's objection to it.

Contested figures and uncertain wordings. Panakareao's saying is recorded in several Māori forms across the sources — *atarau*, *ātārangi* and *atakau* all appear for the shadow — and no authoritative original wording can be given here; the English is quoted in the form recorded by the Ministry for Culture and Heritage, and his reversal is reported speech recorded by Richard Taylor, not a direct quotation. Crown land accounts to 1844, given here as roughly £4,000 spent and £40,000 realised, come from a public-broadcast history and have not been checked against the colonial land returns. Land passing under FitzRoy's pre-emption waiver is given as about ninety thousand acres. Treaty signatures at Waitangi on 6 February 1840 are variously given as forty-three, forty-five or about fifty; around five hundred and forty signatures were gathered in total across the country by 3 September 1840, of which thirty-nine were to an English text.

Outstanding verifications, flagged by name. The ten-owner rule is stated here as it is universally described in the Tribunal literature and standard histories, but the relevant section of the Native Lands Act 1865 has not been read against the statute text for this module. The date of FitzRoy's first pre-emption waiver is given as 1843 by some sources and 1844 by others and is not resolved here. Whether the *huihuinga/whakaminenga* substitution on the night of 4 February was requested by Busby, as the standard account has it, rests on Busby's own later recollection.

Section Seventy-One

The robe: the story the order told about itself, whom it was addressed to, and what happened when the addressee was legislated out of existence — from a treaty written for Exeter Hall, through a constitutional clause that was never once used, to a sacred compact rediscovered ninety years after a court called it a nullity

Whose belief was load-bearing

Every order tells a story about why it is entitled to exist, and the useful question is never whether the story is true. It is who the story is for. Nobody produces an elaborate justification for an audience that cannot do anything; the trouble and expense are spent exactly where somebody's belief is holding something up. So the way to read a robe is to work backwards from its cost to its intended reader, and then to check what happened to that reader.

In most of the colonial cases this collection has run, the answer is stable across the order's whole life: the robe is cut for the metropole, whose taxpayers fund the enterprise and whose voters can stop it, and not for the conquered, whose belief the arrangement does not require. New Zealand starts there and then does something the collection has not previously recorded. Within twelve years of the founding, the audience the robe had been cut for was removed — not by revolution, not by neglect, but by statute, at the colony's own request and with the metropole's agreement. And the garment was then re-cut, three times, each time for a different reader, ending with an audience that had not existed when the first version was sewn.

The robe cut for Exeter Hall

The founding robe of New Zealand is the Treaty of Waitangi, and it was made for London.

The evidence is in what it cost. A power intending simply to take a country does not send an officer to negotiate an instrument in the conquered's own language, explain it over two days of open argument in which chiefs are permitted to tell him to his face to go home, and then spend seven months carrying it by ship and on foot to some fifty locations to gather around five hundred and forty marks. That is enormous trouble. It was undertaken for two reasons, and the previous module established the first: Hobson had no soldiers and could not have compelled anything. The second is the one this

module is about. The men who wrote his instructions were operating in front of an audience that had just spent twenty million pounds of Treasury money abolishing slavery, had a Select Committee of the Commons reporting on what British settlement did to indigenous peoples, and had in the Colonial Office's permanent under-secretary an evangelical abolitionist who thought the whole New Zealand venture wrong.

Read Normanby's despatch of 14 August 1839 as the robe's design document rather than as policy and it becomes very legible. The Queen *"disclaims for herself and her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the dominions of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained."* Note what is being asserted. Not that the outcome will be good for Māori — that claim is made elsewhere in the despatch and is much weaker. The load-bearing claim is about *method*: consent, free, intelligent, and expressed in the natives' own customary manner. That is a claim about procedure, and procedure is precisely what an audience twelve thousand miles away can check. It cannot verify whether Māori are prospering in 1845. It can verify whether a treaty was signed, by whom, and after what explanation, because those things travel in a despatch box.

So the founding robe of this colony is a robe about process, and the reason it is about process is that the reader it was cut for could only audit process. This is not cynicism about the drafters. Every indication is that James Stephen and the Marquess of Normanby meant it. The point is structural: a robe's content is shaped by what its audience is able to check, and a distant audience can check paperwork.

Why the seam would not close

There is a complication in this case that made the metropolitan robe unusually hard to maintain, and it explains why London went on interfering for twenty-five years after it had every practical reason to stop.

The ordinary colonial arrangement is that the metropole learns about the colony from the colony's own government. Despatches run six months each way, the Governor writes them, and what London knows is what the Governor decided to write down. That is the seam split by distance, and its normal condition is that the colony controls the tap.

Here it did not. The Church Missionary Society had been in New Zealand since 1814 and reported to its own committee in London, not to the Colonial Office. Its men — Henry Williams, Octavius Hadfield, later Bishop Selwyn from outside the Society — wrote home constantly, and a good deal of what they wrote was to the effect that the settlers were robbing Māori and the government was letting them. Exeter Hall

read that correspondence. The Aborigines Protection Society read it. Members of Parliament read it. The consequence was that no New Zealand governor could rely on his own despatches being the only account reaching Downing Street, and several of them said so bitterly.

That is worth stating as a mechanism rather than as a curiosity: **a colony containing a body with an independent line to the metropole cannot fully control the seam, and its robe has therefore to survive contradiction rather than merely to be asserted.** The New Zealand robe of the 1840s is unusually detailed, unusually defensive and unusually often revised, and the reason is that somebody on the ground was writing to the same address.

The addressee legislated away

Then, between 1852 and 1863, the audience was removed.

The New Zealand Constitution Act 1852 gave the colony an elected House of Representatives, a nominated Legislative Council, and six provinces with elected councils; responsible government — a ministry drawn from the parliamentary majority — followed after the second Parliament assembled in 1856. Two things were deliberately withheld from the settlers at first: defence, and Māori affairs, including the purchase of Māori land, both of which remained with the Governor. Settler politicians wanted them, and were candid that one reason they wanted Māori affairs was that it would make land easier to acquire. In 1856 a compromise put the native secretary and the chief land purchase commissioner under the general oversight of a native minister while leaving formal responsibility with the Governor. By 1863 the reservation had effectively gone.

The franchise in the 1852 Act was, on its face, colour-blind: any male of twenty-one owning freehold worth £50 or leasing at £10 a year could vote, with no racial distinction whatever. In practice almost no Māori qualified, because Māori did not hold land in a form the property qualification recognised. The exclusion was achieved without a word of exclusion being written, by the collision of a neutral rule with a customary tenure — and the same institution that would later convert that tenure into individual title was, in doing so, converting Māori into voters as a side effect that nobody had intended and that the four Māori seats of 1867 would be created partly to manage.

And then there is section 71.

The Act provided that the Crown might, by Letters Patent, set aside districts within which the laws, customs and usages of Māori should be maintained for the government of Māori themselves. It is a substantial provision. Māori who read it — and they could

read it, because the relevant extracts were published across successive issues of the *Taranaki Herald* from 8 December 1852 — understood it as the constitutional form of what article two of Te Tiriti had guaranteed: their own authority, over their own places, under their own law. It was exactly the arrangement the Kīngitanga would attempt to establish for itself six years later and be invaded for attempting.

Section 71 was never brought into force. Not once, anywhere, in the thirty-four years of its currency and beyond.

A clause of that kind is the purest observable specimen of a robe there is. It is text that exists in order to be read. It satisfied a metropolitan conscience that the promise of 1840 had been given constitutional shape; it cost nothing, because it required an act of the Crown to activate and no such act was ever performed; and its presence on the statute book was itself the answer to anybody in London who asked whether Māori self-government had been provided for. It had been provided for. It was in the Act. Whether it operated was a separate question that nobody at that distance was positioned to ask.

The robe re-cut for the settler

Once the reader changed, the garment changed, and the change is visible in a single generation.

The colonial press of the 1860s and 1870s was addressing a settler electorate that had votes, land hunger, and no interest in a procedural justification aimed at Exeter Hall. What it wanted was a reason to feel entitled and a reason to feel afraid, and it got both. At a public meeting in Nelson in 1860 on the subject of the Taranaki war, a speaker declared that but one flag should fly in the colony and that one the Union Jack, and was cheered. A *Taranaki Herald* correspondent, describing the killings that preceded the battle of Waireka, wrote that the victims had been indiscriminately fallen upon and had met their terrible doom not with arms in their hands but engaged in industrial and peaceful pursuits.

By the end of the wars the register had hardened considerably. The *New Zealand Herald* observed in 1874 that *"the Native race is dying out in New Zealand, there is of course no doubt."* In 1879, as the government moved against the passive resistance at Parihaka, the *Patea Mail* offered the view that *"perhaps the present difficulty will be one of the greatest blessings ever New Zealand experienced, for without doubt it will be a war of extermination,"* and the *Taranaki News*, in the same year, put the entitlement without any covering at all: the colony's rapidly increasing population demanded that these lands *"should no longer be retained by turbulent, semi-barbarous people, too idle to put them to any good use."*

Two features of that settler robe are worth isolating, because they are structural rather than merely offensive.

The first is that it required the extinction thesis. A dying race needs no accommodation, its consent is a formality that history is already dissolving, and its land is not being taken from anyone in particular but merely reverting. The 1874 *Herald* sentence does a great deal of work in eleven words: it converts a political choice into a natural process. This is the settler equivalent of Normanby's line about a national independence the Māori were no longer able to maintain — the same operation, performed thirty-five years later for a different audience, and now stated as an observation about biology rather than about politics.

The second is the accusation of idleness, which was the reverse of the truth and was known to be. Waikato Māori in the 1850s were running flour mills, coastal shipping and a wheat trade that fed Auckland and exported to Australia; the land the *Taranaki News* wanted taken from people too idle to use it was land whose users had been supplying the colony that wanted it. The charge is not a mistake about the facts. It is the standard form that a claim of entitlement takes when the claimant needs a reason that is about the other party's character rather than about his own appetite.

The audience that had been discarded, and did not go away

Here is a mechanism this case makes visible that the framework has not carried, and it should be set down before the story moves on.

When the robe changed addressee, the old addressee remained in existence — and became a resource for the losing side of the domestic argument. William Swainson, a former Attorney-General of New Zealand, published *New Zealand and the War* in London in 1862, arguing that the Taranaki war was unjust. Henry Sewell, another former Attorney-General and the colony's first premier, published a letter to Lord Lyttelton in 1864 on the Suppression of Rebellion Act, the New Zealand Settlements Act and the Loan Act. John Gorst, who had lived in the Waikato as magistrate and civil commissioner, published *The Maori King* in London in 1864.

Note where these were published. Not in Auckland. In London — because London no longer governed New Zealand's Māori policy but had not stopped reading about it, and because a settler ministry that could ignore its own opponents could still be embarrassed in front of the Colonial Office, the imperial press and the officers of an army it was still renting. The general form is this: **a robe's discarded audience becomes a court of appeal for the domestic minority, and a colony that has just shed metropolitan supervision remains vulnerable to it for as long as the metropole retains any lever at all.** The levers here were real — the imperial regiments

and the imperial loan guarantee — and the eventual removal of both, which the previous module traced, is also the removal of the last practical use of the London audience. After 1870 the appeal to London becomes literary.

A robe for a finished acquisition

By the 1880s the acquisition was substantially complete, and the robe changed genre again — from justification to reassurance.

The Treaty itself went into a drawer. *Wi Parata* had called it a simple nullity in 1877 and the courts followed that line into the twentieth century. More telling than the case law is the calendar: for something like ninety years, such observances as marked the colony's founding were attached to 29 January, the date of Hobson's arrival and of his proclamations, rather than to 6 February. A state's choice of anniversary is the least deniable statement it makes about whom it thinks it owes its existence to. New Zealand dated itself from a proclamation of sovereignty, not from an agreement — which is exactly what one would expect of an order whose robe was now addressed to the people who had received the land rather than to the people who had signed it away.

What filled the space was the doctrine of amalgamation, and then of assimilation, dressed in a flattery that was genuinely felt and did specific work. Māori were held to be the finest of the Polynesian peoples, possibly of Aryan origin, hardened by the great voyage that only superior specimens would have survived and invigorated by a bracing climate; Pākehā, correspondingly, were the best of the British, better than those left behind. Two fine stocks, mingling. The careers of James Carroll, Maui Pomare, Peter Buck and Apirana Ngata — knighted, eminent, internationally visible — were displayed as the proof.

The function of that robe is not to justify anything. It is to make the question stop being asked. And notice how much cheaper it is than the 1840 version. Justification is expensive: it must state a claim, and a stated claim can be tested and refuted. Reassurance states nothing testable. It does not argue that the land was fairly obtained; it simply establishes an atmosphere in which raising the question marks the questioner as peculiar. By the 1950s and 1960s the whole thing had compressed into a single sentence that made no argument at all — that New Zealand had the best race relations in the world, a phrase a Prime Minister could deliver to a school assembly in Kaikohe in the early 1960s and be believed, in a district where the confiscations of the previous century were still perfectly legible on the ground.

That the phrase was not true was demonstrable and was demonstrated. The American psychologist David Ausubel, in New Zealand on a Fulbright grant in 1957–58, published findings that Pākehā held an unwarrantedly sanguine view of the

country's race relations, that an extra-legal colour bar existed, and that persisting in the delusion would produce a brown urban proletariat living in chronic tension with its white neighbours. The response was not refutation but outrage, which is the characteristic response of a reassurance robe to evidence: not argument, because there is no argument to make, but the treatment of the speaker as an offence against good manners.

The compact rediscovered

And then the audience changed again, and the discarded instrument came back out of the drawer.

The first move was made from an unexpected quarter. In 1932 the Governor-General, Lord Bledisloe, and his wife bought James Busby's decayed house at Waitangi, gave it and its grounds to the nation, and contributed £500 towards its restoration. The reserve was dedicated on 6 February 1934, with as many as ten thousand Māori present, at two sites — the Treaty House grounds and Te Tii marae — and Bledisloe prayed that *"the sacred compact made in these waters may be faithfully and honourably kept for all time to come,"* and further that the two races might unite as one nation through Christianity, which he offered as the meaning of the words Hobson was said to have spoken in 1840.

The gap between the two parties at that first commemoration is the whole story in miniature. The Pākehā occasion was about national unity and a compact honourably kept. A great many of the Māori present were marking something else: 1834, when northern rangatira had chosen a flag for an independent country, and 1835, when they had declared its independence — the two events the Landscape of this study opened on, which the state was not commemorating and which their descendants had not forgotten.

The rest followed slowly and then quickly. A whare rūnanga was carved under Ngata's supervision and opened for the centennial in 1940, at which the government wanted a demonstration of national pride and Ngata used the platform to itemise the promises the government had not kept. In 1947 the Royal New Zealand Navy erected a flagpole and held a brief ceremony at which no Māori spoke; a Māori speaker was added the following year. The Waitangi Day Act 1960 made 6 February a national day of thanksgiving in commemoration of the signing. It became a public holiday in 1974.

And in 1975 the Treaty of Waitangi Act established a tribunal to hear claims that the Crown had acted inconsistently with the principles of the Treaty. Its preamble concedes, on the face of the statute, the thing the colony had spent a hundred and thirty-five years not saying: *"And whereas the text of the Treaty in the English language*

differs from the text of the Treaty in the Maori language." In 1985 the Act was amended to let the Tribunal look back to 1840.

Why then? Because a new audience had come into existence with the power to make the question expensive. Between 1945 and 1986 the Māori population went from about a quarter urban to roughly four-fifths urban — a population that had been dispersed across rural districts where it could be ignored one district at a time was now concentrated in cities, literate, organised, and in a position to march. Outside, an international audience had become newly attentive to what settler states did with indigenous peoples, and a country whose principal external asset was its reputation had a direct interest in the answer. The robe was re-cut because the licence to operate had moved into new hands, and it was re-cut using material that had been lying in the drawer since 1877 — which is the only reason the operation was possible at all.

Reading the robe against the framework

The prediction was a robe cut for the metropole, and it held for exactly twelve years. What this case adds is what happens afterwards, and it produces a sharper statement of the rule than the one the collection has been using.

First: a robe is addressed to whoever can revoke the licence, and in a settler colony that identity migrates — so the robe is not a garment but a sequence of garments. In 1839 the power to stop the enterprise sat in London, with a Parliament, a Colonial Office and a humanitarian public; the robe was accordingly a procedural one, making checkable claims about consent, because a distant auditor can check paperwork and nothing else. By 1856 the power to stop things sat with a settler ministry answerable to a settler electorate; the robe became an entitlement robe, making claims about the character of the dispossessed, because that is what a resident electorate wants to hear about people it lives beside. After 1877 nobody in particular held a revocable licence, and the robe accordingly became a reassurance — the cheapest form, because it asserts nothing that can be refuted. From the 1970s a new holder appeared, urban and organised and internationally audible, and the robe was re-cut again around the very instrument the previous version had discarded.

Second, and this is the most portable finding: the calendar names the audience. For ninety years this state dated its own beginning to Hobson's proclamation of sovereignty and not to the Treaty. No official ever had to announce that the agreement had ceased to matter; the anniversary said it. When the anniversary moved to 6 February, the audience had already moved. Where a robe's stated content and its commemorative practice disagree, the practice is the more reliable evidence, because a

commemoration costs money and involves crowds and cannot be produced for an audience that is not there.

Third: robes change genre depending on whether the acquisition is still running. While a taking is in progress the robe must *justify*, which means stating claims — and a stated claim is a hostage, because it can be checked, which is why the 1840 procedural robe was fragile enough that the missionaries could and did contest it in London. Once the taking is complete the robe only has to *reassure*, and reassurance is structurally cheaper and far more durable, because it advances no proposition and therefore offers nothing to refute. "The best race relations in the world" cannot be argued with; it can only be found rude. That is why Ausubel's evidence produced anger rather than debate, and it is why a completed conquest is harder to argue about than one still under way.

Fourth: the discarded audience persists, and becomes the opposition's court of appeal. Swainson, Sewell and Gorst all published in London after London had ceased to govern Māori policy, because London still held the two levers that mattered — the regiments and the loans. Once those went, in 1866–70, the appeal to the metropole lost its force and the settler robe faced no external check for a century. This suggests a test that can be run on any colony: date the moment the metropole's last practical lever is withdrawn, and the robe's external accountability ends there rather than at the formal transfer of power.

Fifth, on section 71, and this is the contribution proper. The collection holds that a guard rail is visible in the elaboration of the instruments a power builds to satisfy it. This case shows the guard rail's *residue* — what is left when the constraint that produced a provision goes away but the provision does not. Section 71 is text that was enacted in order to be read by a reader who was going out of the room, and it was never once used. That makes it worthless as government and extremely valuable as evidence, because a clause nobody intends to operate records with unusual precision what its drafters believed they had to be seen to have done.

But the second half of that observation is the one that matters, and this case supplies it where others could not. A dead letter is not inert. It remains on the statute book, readable by people the drafters never contemplated, available to be picked up when the balance of power moves. The Treaty spent a century in exactly that condition — declared a nullity, commemorated by nobody, and preserved — and the reason a tribunal could be built on it in 1975 is that the discarded robe had never been destroyed. So the rule should read: **the residue of a lapsed constraint is a standing asset for whoever can next assemble the power to invoke it.** An order that keeps its old promises on the books because they are harmless has thereby stored a weapon on

behalf of a future claimant, and the very fact that made the promise safe to enact — that nobody would check — is what made it safe to leave lying about.

A note on sources. Quoted exactly from public-domain primary texts: the Marquess of Normanby's instructions to Captain Hobson, 14 August 1839, for the disclaimer of any pretension to seize the islands absent the free and intelligent consent of the natives expressed according to their established usages; the preamble to the Treaty of Waitangi Act 1975 for the recital that the English and Māori texts differ; and Lord Bledisloe's prayer of 6 February 1934 that the sacred compact made in these waters be faithfully and honourably kept for all time to come, as recorded by the Ministry for Culture and Heritage. The provisions of the New Zealand Constitution Act 1852 described here — the franchise qualification of section 7, the reservation of Māori land purchase to the Governor, and section 71's provision for districts in which Māori laws, customs and usages should be maintained — are given from the descriptions published by Te Ara and the Ministry for Culture and Heritage; the statute text has not been read directly for this module and the section 71 provision is therefore summarised rather than quoted.

The nineteenth-century newspaper passages — the *New Zealand Herald* of 1874 on the native race dying out, the *Patea Mail* of 1879 on a war of extermination as one of the greatest blessings, and the *Taranaki News* of 1879 on lands retained by turbulent, semi-barbarous people too idle to put them to any good use — reach this study through a 2023 journalistic article drawing on the work of Vincent O'Malley, and have not been checked against Papers Past. They are quoted as transmitted and the chain is stated here because the wording is doing argumentative work. The Nelson meeting of 1860 and the *Taranaki Herald* correspondent's account of the Waireka killings likewise reach this study through a regional heritage publication citing the originals.

Paraphrased from modern scholarship, briefly and with credit: David Ausubel's 1958 findings on Pākehā perceptions of race relations and on the existence of an extra-legal colour bar, published in article form in 1958 and in *The Fern and the Tiki* in 1960 — quoted nowhere here, as the work is in copyright; Vincent O'Malley on settler press advocacy during and after the wars; the summary of Aryan-origin theories of Māori descent and their use in interwar racial self-congratulation, from a scholarly survey of the period.

Contested figures and uncertain attributions. Attendance at the 1934 Waitangi commemoration is given as up to ten thousand Māori. Māori urbanisation is given as roughly 26 per cent in 1945, 62 per cent by 1966 and close to 80 per cent by 1986, from a single secondary account. The report that Prime Minister Keith Holyoake told a school assembly at Northland College in the early 1960s that New Zealand had the

best race relations in the world is a personal recollection published in a 2024 memoir essay; the phrase itself was in wide circulation and is not in doubt, but this particular occasion rests on one witness. The phrase *He iwi tahi tātou* attributed to Hobson rests on Colenso alone and is referred to here only as what Bledisloe understood Hobson to have said.

Outstanding verifications, flagged by name. Whether Governor Gore Browne used the phrase "virtual sovereignty" of Wiremu Kīngi, as reported in a modern magazine account, has not been traced to a despatch and is not quoted here. The date and manner of the effective transfer of native affairs from the Governor to colonial ministers is given as a process running from the 1856 compromise to about 1863; the sources describe it as gradual and no single instrument marks it, and any precise date should be treated with suspicion.

MODULE 4

Anointed with the Word of God

Formation: who reached the child first, what they installed, why the conquered bought the schoolhouse and gave the land for it — and why, when this people fought back, they fought in the book their conquerors had brought

Where to look

Formation is not schooling and it is not persuasion. It is the question of who reached a person before he was able to weigh what he was being given, and what they put in place there: whose word he learns to credit without checking, who counts as a natural authority, what is sacred and therefore not open to trade, and what story he understands himself to be inside. It runs on ordinary equipment. A human being cannot verify a world this size and so reads cues that stand in for verification — the marks of competence, the deference others already pay, the sincerity of a person who visibly pays a price for what he professes. Those cues were honest in the small world and are forgeable in the large one, but the machinery is not a defect. It is the adaptation that made the species dominant, and it cannot be switched off.

Which means there is no unformed person. To be unformed is to be feral. A conqueror who declines to form a population does not thereby produce a blank one; he produces a population that goes on being formed by whatever was already running, and eventually finds himself facing an adversary somebody else made.

So the place to look is not the curriculum. It is what a population cannot avoid doing — a language, a week, a name, a burial, a season of planting — and the question for New Zealand is unusually sharp, because the decisive formation in this country was installed before the Crown arrived, by people the Crown did not control, and it was bought by the people it was installed in.

What was already running, and why it had taken so completely

The order the missionaries met had all five of the levers working at once, which is why the Landscape found it at the cheap end of the gradient with no enforcement apparatus above the hapū.

Authority came marked and inherited: a child learned who his rangatira was in the same breath as he learned who he was, since both were statements of descent, and he learned that the tohunga could speak to matters that would kill him if handled

wrongly. Belonging was not metaphorical. A hapū of a few hundred on a defended point was the whole of a person's material and social existence, and expulsion from it in a country with no vacant ground and no stranger's hospitality was not social death but the ordinary kind. The sacred was locked in the most literal form the collection has encountered: *tapu* is a sacred-value lock that operates as a physical fact — a thing under tapu is not costly to touch, it is fatal to touch, and children learned this as they learned that fire burns. The story arrived as *whakapapa*, recited aloud, in which the child's own name sat at the end of a line running back through the canoes to the gods, so that the cast of the world and his place in it were installed together and long before he could examine either. And all of it reached him from infancy.

The Landscape argued that this order reached the self-running pole in about twenty generations rather than the thousand years the collection had assumed, and that the reason was the absence of any competitor for the child's attention — an ocean with no return traffic and no rival order visible from any shore. That is worth restating here in its mechanical form, because the rest of the module turns on it. Vigilance is not defeated by an alternative; it is *fed* by one. Where a second set of marked authorities stands within sight, every one of them is evidence that the first set has an outside and could be otherwise. Aotearoa had no second set. The formation therefore had nothing to answer, and installed fast and total.

The corollary is the one nobody would have predicted, and it is what happened next: a field with no competitor is fast to form and also fast to *re-form*, because when a competitor finally arrives there is no third party to complicate the switch.

The formation that arrived before the Crown did

The Church Missionary Society landed in the Bay of Islands in 1814 and for something like fifteen years converted almost nobody. Then it put the language into print, and within a generation the religious life of the northern half of the country had changed.

The mechanics were traced in the Landscape: Colenso's Stanhope press at Paihia from January 1835, portions of scripture in Māori from 1827 and 1834, the Māori New Testament in 1837 in five thousand copies, twenty-seven thousand prayer books, over seventy-four thousand items printed by 1840, the whole Bible translated by 1856 and published as *Te Paipera Tapu* in 1868. What matters for formation is not the volume but two features of it.

The first is who did the teaching. Māori taught each other, in villages no missionary had entered, and the missionaries kept discovering on arrival that the book had preceded them. The most important vector was the one the previous conquest had

created: captives taken in the Musket Wars, held in the north as *taurekareka*, converted there, and then released or escaped and returning home down the same routes the war parties had cut. Piripi Taumata-a-Kura carried Christianity back to Ngāti Porou on the East Coast that way. So the formation moved along channels opened by the earlier conquest, carried by the people that conquest had enslaved, and arrived in each district in the mouth of a relative rather than a stranger — which is to say it arrived already holding the two cues vigilance weighs most heavily, competence and the absence of an interest in deceiving.

The second is that vigilance was working, not failing, and passed it. The missionaries had the press, the metal, the writing, medicine, and a plain competence with things Māori wanted. They had twenty-five years of not having taken anything, and a visible record of siding with Māori against other Pākehā. And they made the display that is hardest to fake: they lived poor among people who could have killed them, buried their own children in that ground, and did not leave. A vigilant mind reading those cues returns exactly the verdict the cues warrant. The message also cohered with a frame already in place — an unseen order, powers that must be propitiated, a category of the forbidden — so the new content did not have to displace a worldview, only occupy it.

And what was installed was not chiefly doctrine. It was the things a person cannot avoid doing. A week, with a rested seventh day, replacing a reckoning of time by moon and season. An annual calendar keyed to a northern hemisphere's festivals. A form of marriage, a form of burial, a form of naming — Te Awaitaia of Ngāti Māhanga became Wiremu Neera in 1836, the Māori sounding of William Naylor, and thereafter that was his name. Literacy in Roman script, in a language that had never been written, where for a decade the entire available library was one book. And a moral vocabulary in which slavery was sin, which is the item that mattered most, because the release of the taurekareka through the 1830s dismantled a structural feature of the old order — the whole category of persons outside descent, and therefore outside rights — before the Crown had landed a single official.

That is the shape to hold before going further. The formation that would matter most in this country was installed by men who did not govern, in the decade before the government arrived, and it could not afterwards be recalled by anybody.

Why the conquered bought the schoolhouse

The Native Schools Act 1867 established a national system of village primary schools under the Native Department, with instruction in English where practicable. It is usually read as an instrument of assimilation imposed on a defeated people, and it was an instrument of assimilation. But the mechanism by which schools actually

appeared was this: a Māori community had to *ask* for one, form a school committee, provide the land, and — until 1871 — pay half the building cost and a quarter of the teacher's salary.

Communities asked. By 1879 there were fifty-seven, and demand came first and most strongly from districts that had been neutral or had fought for the Crown. Schooling was made compulsory for Māori children in 1894, but the system had been built for a quarter-century on requests before the compulsion arrived.

It is worth working out what that decision looked like from inside, because it is not the decision a beaten people makes out of despair. Consider a rangatira in, say, 1872, in a district where the Native Land Court has begun to sit. He has watched blocks pass out of his people's hands on the strength of a document in a language he cannot read, produced by a court whose procedure he cannot follow, in favour of ten named individuals whose names were written down by a clerk. He can see with total clarity that the instrument now taking his country is not a rifle. It is a piece of writing in English. The question in front of him is whether to give a hectare of land so that his grandchildren can read one.

That is the same calculation his own grandfather made about muskets in 1820, and it has the same answer. Acquire the instrument that is beating you or be beaten with it again. The schools were bought, on those terms, by people making a correct assessment of what they could see — and one of the things that makes this case hard is that they were not wrong. The literate generation produced Ngata and Buck and Pōmare, the 1972 petition, and eventually the Tribunal.

What arrived with the schoolhouse, though, was more than English. The Native Schools Code of 1880, issued under the first inspector James Pope, standardised the curriculum, the hours, the qualifications and the governance. Beyond reading, writing and arithmetic the syllabus tilted heavily to manual and domestic training — boys to farming and trades, girls to household work. Around that sat the things that are not curriculum at all and do the actual formation: punctuality, hygiene drills, European meals, standards of dress, Bible reading, and an explicit intention to instil individual habits in place of communal ones. A child who is taught arithmetic can forget it. A child who is taught at five that a bell governs the day, that a body is clean or unclean by a particular standard, and that one eats at a table at an appointed hour, does not experience any of that afterwards as a foreign order. He experiences it as decency, and he will feel the absence of it in others as a fault in them.

Given, and capped

Here the case departs from the pattern the collection expected, and the departure is precise rather than total.

The framework's standing account, drawn largely from cases like British Kenya, is that a colonising power withholds formation from the majority because forming them would mean admitting them, and admitting them would mean owing them — so it forms a thin administrative class and leaves the rest to whatever formation was already running, which duly holds the field and eventually produces an adversary. That logic requires an admission that can be withheld. In New Zealand it had already been granted. Article three of the Treaty had extended to Māori all the rights and privileges of British subjects, in both texts, in 1840. There was no legal category to be protected by keeping them illiterate.

So the colony did not withhold formation. It graded it, and the ceiling was placed not at literacy but higher up. Secondary schooling for Māori was, for most of the period, simply unavailable through the state; what existed was provided by church boarding schools. Native district high schools were not created until 1941, by extending existing primary schools upwards, and the emphasis remained on manual training until the School Certificate examination arrived in 1945. Where the ceiling was broken it was broken against the department's expectations by an individual: John Thornton at Te Aute taught a full academic curriculum and produced from the 1890s the first cohort of Māori university graduates — Āpirana Ngata, Te Rangi Hīroa, Māui Pōmare, Tūtere Wī Repa — the men who would spend the next half-century arguing with the state in its own idiom.

That is a different instrument from withholding, and it fails differently. A withheld formation leaves the old order in undisturbed possession and eventually confronts the coloniser with a coherent adversary formed by somebody else, holding authorities he does not control and a story in which he does not appear. A graded formation produces something harder to see and much harder to organise against: a population formed into the lower registers of the new order, holding its authorities as genuinely its own, and therefore contesting the arrangement from inside — in its courts, its Parliament, its churches and its language. New Zealand got the second, and much of the rest of this study is an account of what that is like to govern.

The two rooms, and the removal of one

For sixty years after 1867 two formations ran in parallel with a boundary between them, and everybody knew where the boundary was. Te reo at home and on the marae;

English at school and in dealings with the government and with employers. A relatively stable bilingualism held until about the 1930s. The school did not destroy the language, and the reason is that the school was not the only room the child could not avoid being in.

Then the boundary was attacked and the second room was removed, in that order.

The attack is on the record in the flattest possible terms. T. B. Strong, the Director of Education, remarked in 1930 that *"the natural abandonment of the native tongue inflicts no loss on the Maori."* Note the adjective. The abandonment is *natural*, which is the same operation the settler press had performed on the population itself in the 1870s when it announced that the race was dying out: a policy is restated as a process, and a thing being done becomes a thing merely happening. Children were punished for speaking Māori at school, and a great many New Zealanders now living can tell you what the punishment was.

But the collapse came with urbanisation. In 1945 about a quarter of Māori lived in towns; by 1966 it was about three-fifths and by 1986 close to four-fifths. A child in a city is not on a marae, is not in a kāinga, and above all is not within earshot of grandparents — and grandparents, in this system as in most, were where the language and the whakapapa actually lived. The second room had not been argued with. It had been left three hundred miles behind. In 1913 over ninety per cent of Māori schoolchildren spoke te reo; by 1975 the usual figure given is under five per cent, with other reckonings putting it nearer eighteen, and the direction is not in dispute even where the number is.

The mechanism is worth naming because it generalises. **Formation does not require a curriculum; it requires a room the child cannot avoid being in.** Sixty years of English-only schooling did not finish the language while the marae stood at the other end of the day. Thirty years of migration did, without any policy directed at the language at all.

The counter-formation, conducted in the conqueror's book

And now the finding this module exists to report, which is visible everywhere in the record and is usually filed under syncretism.

When Māori organised against the colonial order, they did it in the vocabulary the missionaries had installed.

In 1858 the Kīngitanga raised Pōtatau Te Wherowhero as King — not as paramount ariki, a category that had never existed, but as *king*, on the model of Victoria, with a flag, a council, a code of laws, magistrates and eventually a newspaper. At the investiture Wiremu Tamihana, who is remembered as the Kingmaker, performed the

anointing with a Bible, and the words attributed to him state the whole thing in one sentence: *"Your ancestors in the olden days were wont to be anointed with oil, but, since the advent of Christianity, they have been anointed with the Word of God."*

In 1862 Te Ua Haumēne founded Pai Mārire in Taranaki. He understood himself as a new Abraham or Moses; his followers were the Chosen People and New Zealand was the new Canaan; his ministers were called *Teu*, Jews; the movement took the seventh-day sabbath; and the raised right hand from which the fighting form took its reputation is Moses' hand held up against the Amalekites in Exodus 17. Tāwhiao, the second Māori King, was baptised by Te Ua, and Pai Mārire became the religion of the Kīngitanga.

In 1868 Te Kooti Arikirangi, arrested without trial and deported to the Chatham Islands, fell ill there, heard a voice, and led three hundred prisoners in a shipboard escape. They came ashore at Whareongaonga with their hands raised, and the church took its name from the gesture: Ringatū, the upraised hand. Te Kooti identified Māori entirely with the children of Israel and their dispossession with the Hebrews' captivity; he made the Passover the central festival of the Ringatū year, commemorating Exodus 12 and his own escape from exile in the same rite; he built a calendar around the twelfth day of each month and around planting and first fruits; and he told his people to look to God for the recovery of their lost land, which he called Canaan. He also revived what the missionaries had tried to suppress — tohunga, sorcery as an explanation of misfortune, healing by faith — so the old formation was not displaced but folded in. And his political counsel, as his biographer records it, was that only the law could be pitched against the law.

In 1918 Tahupōtiki Wiremu Rātana began the movement that would dominate Māori politics for half a century, and the image his followers preserved of him has Te Tiriti o Waitangi in one hand and *Te Paipera Tapu* in the other. In alliance with Labour from the 1930s, Rātana's candidates took all four Māori seats.

The obvious reading is that these were tactical borrowings, or that a conquered people had been culturally overwritten and were making do with the coloniser's materials. Both readings are wrong, and getting them right is the point.

A formation that has taken supplies the vocabulary of its own opposition, and that is the strongest available evidence that it took. A merely coerced population resists in its own terms, because coercion produces compliance and does not produce vocabulary. These people resisted in Exodus because Exodus was, by then, genuinely how the world was legible to them. Te Ua was not using Moses as a figure of speech; he was reporting what was happening. And the reason the borrowing went that particular way is that the imported frame did something the old one structurally could not.

Whakapapa and mana have no account of righteous defeat: mana lost is mana lost, and a people driven off its land has been diminished, full stop. Exodus has an account. It offers a people who are dispossessed, scattered, enslaved and *still the chosen*, whose defeat is a chapter rather than a verdict. That is why the new formation took hardest and deepest exactly where the losses were worst — in Taranaki, in the Urewera, among the confiscated — and it explains a pattern that otherwise looks like a paradox, namely that the fiercest resistance to the colonial order in this country was mounted by its most thoroughly Christianised subjects.

The lever, operated deliberately, in reverse

The last movement in this story is the only instance I have found in the collection of a formed population consciously working the formation lever on itself.

In 1972 Ngā Tamatoa and the Te Reo Māori Society presented Parliament with a petition carrying more than thirty thousand signatures asking that Māori be taught in schools. Māori Language Day followed that year and Māori Language Week from 1975. In 1986 the Waitangi Tribunal found that the Crown had failed to protect the language as article two required.

But the decisive move was not the petition and not the Tribunal. In 1982 the first *kōhanga reo* opened at Wainuiomata. A kōhanga reo is not a school. It is a language nest: total immersion in te reo, for children from infancy to school age, run by whānau and guided by kaumātua. Three years later there were three hundred and seventy-seven; by 1993, eight hundred and nine. The first kura kaupapa Māori followed in 1985, official support for them in 1989, and the Māori Language Act in 1987.

Read what that is, structurally. A population that had lost a formation set out to reinstall one, and identified without any theory the exact developmental window that the whole of this framework's account of formation turns on — the years before vigilance matures, before school, when the authorities a person will credit for the rest of his life are being set. It put the grandparents back in the room by building a room and putting the grandparents in it. It did not petition for a better curriculum; it went underneath the curriculum entirely.

Reading formation against the framework

The first revision concerns when the standing rule applies at all. The collection holds that a colonising power withholds formation from the majority because forming them would mean admitting them. That rule presupposes an admission which can be denied, and this case shows what happens when it cannot. Article three had made

Māori British subjects in 1840, in both texts, before any of this began; there was no legal status to be protected by keeping them unformed. So the colony formed them and moved the ceiling instead — supplying primary schooling, English, manual training and the habits of the settler day, and simply not supplying the secondary and professional formation that would have produced competitors, until 1941 for high schools and 1945 for the examination that led anywhere. **Where the conquered have already been made subjects, formation cannot be withheld, only graded.** And graded formation has a different failure mode from withheld formation: instead of an adversary formed by somebody else and speaking a language the state does not command, it produces an adversary formed by the state itself, holding the state's own authorities as genuinely its own, and attacking the arrangement from inside it — in its courts, its Parliament, its scriptures and its statutes. Which is exactly the opposition this state has faced ever since.

The second is that a conqueror who inherits a formation inherits its contents. The decisive formation here was installed by the Church Missionary Society in the 1830s, before the Crown arrived, for its own purposes, and could not afterwards be withdrawn by anyone. Britain acquired a literate, Christian, missionary-trusting population, which was enormously convenient in 1840 and let it obtain by persuasion what it could not have obtained by force. It also acquired Exodus, the Ten Commandments, and a book in which the powerful are frequently in the wrong — and it was those, not the old order, that armed the resistance for the next century. The seam is cheapest to acquire by redirecting a channel somebody else built, and this is the price of the cheap route: **a borrowed formation carries whatever else was in it.**

The third is a diagnostic, and I think it is the most portable thing in this module. To determine whether a formation has genuinely taken or is merely being enforced, look at what the *resistance* speaks. If opposition to the order is conducted in the order's own vocabulary — its law, its scripture, its political forms, its idea of what a legitimate authority looks like — the formation is real, whatever anyone says about coercion, because coercion produces obedience and cannot produce a frame. A Māori king anointed with a Bible, a prophet who is Moses, a church whose central festival is the Passover, a movement holding the Treaty and the scriptures one in each hand: none of that could have been compelled, and all of it is evidence that the installation had succeeded to the roots.

The fourth revises how formation is destroyed, and it corrects an assumption the collection has been carrying about schooling. Sixty years of English-only instruction did not kill te reo, because the child went home at the end of the day to a room where the language lived. What killed it was migration, which removed the room,

in thirty years, without any policy aimed at language at all. **Formation does not require a curriculum; it requires an environment the child cannot avoid.** Whoever controls that environment controls the formation regardless of what is taught anywhere else — which is why kōhanga reo worked, since it is not a syllabus but a room, and why the state's language policy had been comparatively ineffective for as long as a competing room existed.

And the fifth completes the clock this study opened on. The Landscape proposed that the speed at which a formation naturalises is governed not by elapsed time but by the number of competing claimants for the child's attention, and that Aotearoa's five hundred years were fast because the field held no alternative. This module supplies the other half. An uncontested field is fast to form and equally fast to be *re*-formed: when the missionaries arrived with honest cues — competence in things that plainly worked, benevolence with a long record behind it, and men who paid visibly and permanently for what they professed — a second formation established itself across the northern half of the country in about fifteen years. That is not the behaviour of a people being fooled. It is vigilance, working exactly as designed, encountering for the first time in five centuries a second marked source and finding it sound. The vulnerability was never credulity. It was that there had only ever been one answer available, so the first credible second answer went in almost unopposed.

A note on sources. Quoted exactly from public-domain primary material: T. B. Strong, Director of Education, on the natural abandonment of the native tongue inflicting no loss on the Māori, from his 1930 remarks as published in *Maori and Education* (ed. P. M. Jackson, 1931) and quoted by Te Ara. The words attributed to Wiremu Tamihana at Pōtatau Te Wherowhero's investiture — that the ancestors were anointed with oil but since the advent of Christianity are anointed with the Word of God — reach this study through a footnote in a modern scholarly article on *Te Paipera Tapu*, which reports them as spoken to Pōtatau at the investiture; the underlying nineteenth-century source has not been consulted, and since the module takes its title from this line the chain is stated plainly here. Te Kooti's counsel that only the law could be pitched against the law is Judith Binney's rendering of his position as published by Te Ara, not a direct quotation from Te Kooti, and is presented as such in the text.

The statutory and administrative facts of the native schools system — the Native Schools Act 1867, the requirement that communities request a school, form a committee, supply land and until 1871 meet half the building costs and a quarter of the teacher's salary; the transfer to the Department of Education in 1879; the Native Schools Code of 1880 and James Pope's appointment as inspector; compulsory schooling for Māori from 1894; native district high schools from 1941; the School

Certificate from 1945; and the abolition of the separate system in 1969 — are taken from Te Ara and from a New Zealand Parliamentary Library research paper. The characterisation of the curriculum as heavily weighted to manual and domestic instruction, with European meals, dress standards, punctuality and hygiene routines and an explicit aim of instilling individual over communal habits, is drawn from those sources together with a reference-work summary and is a synthesis rather than a quotation from the Code, which has not been read directly.

Paraphrased from modern scholarship, briefly and with credit: Judith Binney on Te Kooti and the Ringatū calendar, including the Passover as the church's central festival and the *huamata* and *pure* rites of planting and first fruits; John Barrington on the separate Māori school system; Ross Calman for the language figures; Richard Benton on the danger of language death in the 1970s; the standard accounts of Pai Mārire's Old Testament typology, of Te Ua Haumēne's self-understanding as a new Abraham or Moses, of the raised hand as Exodus 17, and of Tāwhiao's baptism by Te Ua.

Contested figures, given as ranges or with their uncertainty stated. Te reo speakers among Māori schoolchildren: over 90 per cent in 1913 on Calman's reckoning; by 1975 the commonly cited figure is under 5 per cent, though other accounts put the proportion of Māori children able to converse in the language at about 18 per cent for the same year, and the Waitangi Tribunal's 1986 report used the under-5-per-cent figure for 1995. Native schools: 57 by 1879; the total number established over the system's life is variously given and a figure of about 200 appears in reference works without a clear basis. Kōhanga reo: 377 by 1985 and 809 by 1993. Māori urbanisation: about 26 per cent in 1945, 62 per cent by 1966, close to 80 per cent by 1986, from a single secondary account, as noted in an earlier module. Te Kooti's escape party is given as about three hundred men, women and children.

Outstanding verifications, flagged by name. The claim that Pai Mārire adherents called their ministers *Teu* and adopted a seventh-day sabbath rests on a single encyclopaedia entry and has not been corroborated. The identification of Piripi Taumata-a-Kura as a returned captive who carried Christianity to Ngāti Porou is well attested in outline but the details of his captivity have not been checked here. Whether the words attributed to Wiremu Tamihana were spoken in that form, or are a later report, is unresolved; the fact that Tamihana performed the anointing with a Bible is not in doubt.

MODULE 5

The Smoking Meal of Joints of Mutton

The cost column: why the ordinary man complied — the labourer who had already walked away from a worse arrangement, the digger who could not make tucker, and the ploughman who met sixteen hundred armed men

Two columns in one country

An order does not need most of its people to love it. It needs them to comply, and compliance has four sources: real benefit, a settled sense that the arrangement is just, a credible cost for refusing, and nowhere better to go. Where the first two are strong the third can be almost empty; where the first two are thin the state has to fill the third, and the size of what it must inflict is the honest measure of how little the arrangement is worth to the person inflicted upon.

New Zealand asks the question twice and gets two answers so far apart that they are hard to hold in the same sentence. In the same year — 1881 will do — this state was paying its settler labourer well enough that it needed almost no coercive apparatus for him at all, and was marching sixteen hundred armed men into a village of unarmed farmers who had planted crops on ground a surveyor had pegged. Not in sequence. Simultaneously, four hundred miles apart, out of the same treasury.

What follows works through the mix at the bottom — the assisted immigrant, the small settler, the gum digger, the Dalmatian, the shearer, the Māori cultivator with eleven acres and a court summons — and prices each of them separately, because they were priced separately.

The man the poster was painted for

In June 1870 the Colonial Treasurer, Julius Vogel, proposed borrowing on the London market to pay for railways, roads, telegraphs and immigrants, and over the following fifteen years the colony brought in on the order of a hundred thousand assisted migrants — part of a total inflow of 289,026 between 1871 and 1886, into a non-Māori population that had stood at just over a quarter of a million at the start. By 1873 the government had fifty-three immigration agents in England, seventy-eight in Scotland and forty-six in Ireland. The advertisements asked for married agricultural labourers and single female domestic servants, provided they were *"sober, industrious, of good moral character, of sound mind and in good health."*

One agent described how he illustrated his recruiting meetings with large watercolour sheets that produced an *"electrical effect"* on the audience, among them *"the smoking meal of joints of mutton waiting for the New Zealand workman, enough to make him dance after a hard day's work."*

Take the poster seriously as evidence, because it is the clearest statement anywhere in this study of what the settler common man was being sold and what he was being sold *against*. The men in those halls were at the end of the golden age of British agriculture. Cheap imported wheat was pushing prices down, machinery was pushing labour out, and an agricultural labourer in Dorset or Antrim in 1873 was watching his own position deteriorate with no prospect of it stopping. What the picture offered was not liberty or land or a new nation. It was meat, on a plate, every day, for a man who worked.

And it was substantially true. That is the first fact of the settler cost column and it disposes of most of the puzzle before it starts. Why did the Pākehā labourer comply with the New Zealand arrangement? Because he had already exercised exit, at very great cost, in order to enter it. Every one of those people had put three months on a ship between himself and his relatives specifically to leave a worse bargain. The arrangement he arrived in was not competing against an abstraction; it was competing against Dorset, and it won on the merits.

Exit stayed open, and it set the price

The settler order's second distinguishing feature is that his exit did not close behind him.

About forty per cent of the people who arrived in that great migration took a look and moved on. When the assisted passages stopped around 1890 and the Long Depression bit, the flow reversed and people left, mostly for Australia, on a Tasman fare that ran to about two pounds. A carpenter in Auckland in 1888 was a week's sailing and a fortnight's wages from Sydney, and he knew it.

This is the mechanism that explains what is usually explained by national character, and it deserves stating flatly. **A settler state that needs population and cannot compel it must bid for it, continuously, against every other destination its people can reach.** New Zealand was in exactly that position and produced, in a single decade, the world's first system of compulsory state arbitration in industrial disputes — William Pember Reeves's Industrial Conciliation and Arbitration Act of 1894 — along with statutory hours and conditions, a graduated land tax intended to break up the great estates, old-age pensions in 1898, and, in 1893, the vote for women. Between

1894 and 1906 there were no significant stoppages and the country became known abroad as the country without strikes.

The usual account credits Liberal ideology, and the ideology was real. But read the sequence as a price and it becomes much more legible: the reforms cluster in the decade immediately after assisted immigration stopped and the population began leaving. A state whose common man holds a standing, cheap, credible threat to walk onto a boat cannot let his arrangement fall below the Australian one for long, and what that constraint produces looks from the inside exactly like conscience.

Two honest complications belong beside that. The first is that the settlement was struck at a moment of labour weakness, not strength: the watersiders', miners' and seamen's unions had been beaten in the maritime strike of 1890, were in no condition to strike again, and accepted compulsory arbitration partly because the alternative had just failed in front of them. The bargain was generous anyway, which is the point — the competition constraining the state was not the union but the shipping timetable. The second is that the generosity had a term. By 1905 the Arbitration Court was refusing to move wages with inflation, the workers who had welcomed the system were turning against it, and the industrial peace that had made the country famous was about to end badly. A price paid because exit is cheap gets renegotiated when the buyer thinks the seller has stopped looking at the boats.

The bottom of the settler heap

The picture of joints of mutton was not accurate everywhere, and the place it was least accurate was the northern gumfields.

Kauri gum lay in the ground across the gumlands of Northland and the Auckland isthmus, and digging it required a spear, a spade and a willingness to spend the day in a trench or a swamp. Northland Māori were on the fields first, joined later by Māori from the King Country, the Waikato and the Bay of Plenty. Then, from the 1880s, everyone else: British diggers, deserters and runaway soldiers from the wars, Chinese, Frenchmen, Germans, Malays, Bosnians in fezzes whom the locals took for Turks, Finns whom they took for Russians, and above all Dalmatians. A settlement north of Dargaville was called Babylon, for the number of languages spoken in it.

They lived in huts of mānuka poles and sacking and bought their supplies on credit from the store. A buyer wrote in 1898 that *"the life of a gum-digger is wretched."* By the late 1890s the gum was getting harder to find and many diggers, in a shopkeeper's phrase, *"could not make tucker"* — they were not earning enough to cover their own food. Small farmers on unbroken land in the north worked the fields in winter to subsidise farms that could not yet feed them.

And it is here, at the bottom of the settler order, that the state's cost-inflicting apparatus becomes visible for the only time in this half of the ledger. British diggers complained that the Dalmatians were too effective, worked an area out methodically, and sent their earnings home; about sixty per cent of them did indeed return to Dalmatia, and they were called birds of passage. In the election year of 1893 the Austrian question became politics and a commission was appointed. A second commission in 1898 described the Dalmatians as *"hardy, sober, industrious, law-abiding people"* who *"would make admirable settlers."*

The Kauri Gum Industry Act 1898 was passed anyway. It created gum reserves covering something like a hundred thousand hectares, available exclusively to British subjects, with a licensing system and a three-month qualification for new arrivals; further restrictions followed in 1908 and 1910, after which only British subjects could hold a licence at all. The Dalmatians responded by dealing directly with private landowners and paying rent for the right to dig, which is what a population does when a state closes a door it cannot bar.

One detail of that Act repays attention out of all proportion to its size. The reserves were open to British subjects *and to Māori of the district*. In 1898, at the very bottom of the colonial labour market, the line the state drew ran between subject and foreigner rather than between settler and native — which means that the third article of the Treaty, a dead letter in the courts since 1877 and not worth much anywhere else, paid out here, in a gum swamp, in the form of a licence a Croatian could not get. Nobody planned that. It is simply what happens when a legal category is left lying about for sixty years.

The other detail worth holding is that the Bay of Islands member of Parliament told the House in 1898 that there were two thousand Dalmatians in Mangōnui County, where the census had found fifty-four two years earlier and would find two hundred and forty-one ten years later. The figure did not have to be true to do its work. Social pressure at the bottom of a labour market runs on the number people are willing to repeat.

The other column

Now the Māori common man — not the rangatira, not the assessor, not the member for Eastern Maori, but the cultivator in a valley where the court has been sitting.

For a period his benefit had been real and large. Through the 1840s and 1850s Māori communities in the Waikato, the Bay of Plenty and Poverty Bay ran flour mills,

coastal vessels, wheat, potatoes and pigs, fed Auckland, and exported to Australia. That was a genuine boom and it was the strongest case the arrangement ever made to him.

Then it went, and the arithmetic that replaced it can be stated in acres. By 1891 Māori held just under eleven million acres, about forty per cent of the North Island. By 1900 the land in Māori hands had fallen to something like a tenth of the original tribal estates. By 1939 Māori owned about nine per cent of the North Island. The population reached its lowest recorded point at the census of 1896 — the Māori count is given variously between about forty thousand and forty-two thousand depending on how people of mixed descent living as Europeans are handled — while the non-Māori population passed seven hundred thousand. In Poverty Bay by 1891 there were more than four Pākehā to every Māori. The Stout–Ngata commission of 1907–08 found that around seventy per cent of the land in Cook County had passed out of Māori hands, and that about half of what remained was leased to Pākehā.

A man in that position is not complying because of benefit. So work the other three.

Belief was absent, and the evidence is that he built alternatives. A population that thought the arrangement just does not raise a king, found a church, or construct a settlement in Taranaki to which the dispossessed travel from North Auckland, the King Country, the Wairarapa and the Chatham Islands. Nobody builds a parallel state for an order he believes in.

Exit existed, was physical, and was used. This is the feature that makes New Zealand unlike almost every case on the shelf. Behind the *aukati*, the boundary line, lay the King Country, which the government did not enter for something like two decades after the wars. The Urewera lay behind its own difficulty of terrain. Parihaka lay on confiscated ground the Crown had proclaimed and never occupied. A Māori who would not comply did not have to emigrate and did not have to fight; he could walk inland, into country the state had claimed on paper and could not reach.

And the way that exit was finally closed is the single most instructive fact in this module: it was closed by surveyors.

Vogel's public works programme of 1870 was aimed at Māori land from the beginning, and he was explicit that the immigrants, roads and railways were meant to accomplish what the army had not. Twenty-three years later, living in England, he put it without any covering at all: *"The Public Works Policy seemed to the Government the sole alternative to a war of extermination with the natives."* The railway lines edged inland from the coasts, nibbled the margins of the Māori estate, and then cut it into pieces small enough for the court and the buyer to handle; it took four decades, and it was the public works programme rather than the wars of the 1860s that finally brought the colonial government's authority over the whole country.

Consider what that instrument does that a regiment cannot. A regiment closes an exit only while it stands there, costs forty pounds a head per year, and goes home when the money stops. A road closes the exit permanently, maintains itself, and was going to be built anyway on borrowed money for reasons that had nothing to do with Māori. More than that: a road does not merely close an exit, it *out-competes* it, because it arrives carrying wages, a store, a purchase offer and a sitting of the court, so that the refuge behind the aukati stops being a refuge and starts being simply a poorer place with worse access to everything. Nobody has to be defeated. The value of holding out declines until holding out stops being sensible.

What the cost of refusal actually was

And when a community refused anyway, the price is on the record with a date.

At Parihaka in Taranaki, Te Whiti-o-Rongomai and Tohu Kākahi had built a settlement on land declared confiscated in the 1860s and never taken up, and had made it a refuge for the dispossessed. In May 1879 the government moved to survey and occupy the Waimate Plains. Parihaka's answer was to send out ploughmen — men who walked onto the surveyed blocks and ploughed them, asserting that the land was still Māori. Several hundred were arrested and imprisoned without trial, many sent to South Island gaols, where some of them died. When men from Parihaka rebuilt fences the government had removed, they joined the ploughmen in detention.

On 19 October 1881 a proclamation gave the community fourteen days to accept the reserves offered or lose whatever they still held. It was signed while the Governor, Sir Arthur Gordon, a known critic of the government's Taranaki policy, was at sea returning from Fiji; he landed a little over two hours after the signing and was furious to find it had been rushed through in his absence.

On the morning of 5 November about sixteen hundred Armed Constabulary and volunteers marched on the village. Several thousand people were sitting quietly on the marae. Children came out to meet the column with singing, and food was offered. The Native Minister, John Bryce — a Whanganui farmer who had fought in the campaign against Tītokowaru, and who regarded the place as a *"headquarters of fanaticism and disaffection"* — had the Riot Act read, arrested Te Whiti and Tohu, and ordered the village pulled down and its people dispersed. It took two weeks to demolish the houses and two months to destroy the crops; stock was slaughtered or driven off; people identified as belonging elsewhere were expelled. Te Whiti and Tohu were held without trial for sixteen months. Press were officially excluded from the scene. When the Sim Commission investigated the confiscations in the 1920s it was told that women had been raped by the troops and that some had borne children as a result. Arrests of

Parihaka people continued for years afterwards, and the last of the prisoners were not released until 1898.

Set the two columns beside each other and let the figures do the work. For the settler labourer in 1881, the cost of non-compliance was the loss of a job in a market where labour was short and Sydney was two pounds away. For the Māori cultivator in Taranaki in the same year, the cost of non-compliance — where non-compliance meant putting a plough into ground he believed was his — was sixteen hundred armed men, his house, his crops, his stock, and imprisonment without charge.

And note precisely what was punished. Nobody at Parihaka raised a weapon; Te Whiti and Tohu had spent fifteen years forbidding it, and had made certain everyone understood that the troops were to be met without resistance. The offence was the ploughing. What this order could not tolerate was not violence but the continuing public assertion that the land question was still open — because the instrument on which the whole arrangement rested was a register, and a register works only while its findings are treated as settled. A ploughman on a surveyed block is not attacking the state. He is falsifying its title deeds, which in this country was the more serious thing.

The ones who ran the numbers differently

There was no single Māori cost column either, and the contrast between two neighbouring districts on the East Coast shows compliance being priced hapū by hapū rather than nationally.

Ngāti Porou, under Rāpata Wahawaha, had fought on the Crown's side, had extracted arms as the price of that service and kept them, and held country that Pākehā did not particularly want. Their leadership used the Native Land Court rather than boycotting it, sold or leased only back-country blocks, and from the 1880s ran sheep on their own account. Relatively few Pākehā families settled among them, and they kept much of their rohe.

Fifty miles south, the Tūranga tribes of Poverty Bay lost the great majority of their land and became a rural proletariat of bushmen and shearers, working for wages on ground that had recently been theirs, in a district where Pākehā now outnumbered them four to one.

The difference is not moral and it is not a difference in courage. It is a difference in position: what each group held, who wanted it, what military credit they had banked, and whether their leaders concluded that the court could be worked or only refused. Almost every Māori community in the North Island ran that calculation in the 1870s and 1880s, and they did not all get the same answer because they were not all in the

same place. Even Ngāti Porou's people, Te Ara notes, took wage work; few could make ends meet without it.

Reading the cost column against the framework

First, and most portable: where exit is cheap, the state must bid, and the bidding looks like conscience. New Zealand's reputation as the social laboratory of the world — first compulsory arbitration, statutory conditions, old-age pensions, women's suffrage — is customarily explained by the quality of its settlers or the convictions of its Liberal ministers, and both played a part. But price it. This was a state with a chronic labour shortage, a two-pound fare to Australia, and a record of forty per cent of its assisted immigrants leaving again; its common man held a standing, cheap and entirely credible threat to walk. The reform decade begins immediately after assisted immigration stops and the population starts to drain. **Generosity toward the common man is often just the market price of a population that can leave, and it should be tested by asking what the exit cost was in the years the generosity appeared.** The corollary is on the record too: when the state judged, after 1905, that its workers had stopped watching the boats, the Arbitration Court stopped moving their wages.

Second, and this is the revision the module makes to how the framework measures an order. The collection has been treating position on the gradient — force at one end, conviction at the other — as a property of an order. This case shows it is not. It is a property of an order *and a population*, and one state can sit at opposite ends of the scale for two of its populations in the same year without any strain. In 1881 New Zealand governed its settler common man almost entirely by benefit, with a police force so small it had only just been separated from the militia, and governed the people of Parihaka with sixteen hundred rifles. **So the question "how much force does this order require" has no single answer, and any measurement averaged across a whole population reports a condition that describes nobody in it.** The useful form is always: how much force, applied to whom, and what would that person have had to be offered instead.

Third: exit is closed more cheaply by infrastructure than by force, and infrastructure does something force cannot. The aukati held for two decades against a state that had already won the wars, and it was not broken by an army. It was dissolved by survey, road and railway — paid for out of borrowing the colony was undertaking for other reasons, requiring no garrison, generating their own justification, and impossible to withdraw. And a road does not merely block the way out; it competes with the destination, arriving with wages, a store, a purchase offer and a court

sitting, so that the refuge degrades into a poorer place rather than being conquered. Vogel understood this exactly and said so: public works were the alternative to a war of extermination, and in the narrow sense he meant it, he was right. **The instrument that closes exit in the modern colonial order is a surveyor, and it works because it changes the value of staying rather than the cost of leaving.**

Fourth, on what a state punishes when it punishes hardest. Parihaka is close to a controlled experiment, because the people punished had done nothing violent and had been ordered by their own leaders to offer no resistance whatever. What drew sixteen hundred men was a plough. That tells us what this order's actual floor was, and it was not the army: it was the register. An arrangement whose title rests on a court's findings is vulnerable in one specific way — to anyone who publicly and repeatedly acts as though the findings are not final — and it will spend force against that far out of proportion to any physical threat involved. **Where the settlement is administrative rather than military, the unforgivable act is not rebellion but visible, sustained non-recognition**, because that is the only thing a register cannot survive.

A note on sources. Quoted exactly from public-domain primary material as transmitted: the New Zealand immigration advertisements of the early 1870s calling for married agricultural labourers and single female domestic servants who were sober, industrious, of good moral character, of sound mind and in good health, and the immigration agent's description of watercolour sheets producing an electrical effect and depicting the smoking meal of joints of mutton waiting for the New Zealand workman — both quoted by Te Ara from period sources; Julius Vogel's remark of 1893 that the Public Works Policy seemed to the Government the sole alternative to a war of extermination with the natives, as quoted by the Ministry for Culture and Heritage; the 1898 kauri gum commission's description of Dalmatians as hardy, sober, industrious, law-abiding people who would make admirable settlers, quoted by Te Ara from the Appendices to the Journals of the House of Representatives, 1898, H–12; the gum buyer's remark that the life of a gum-digger is wretched and the shopkeeper's that many could not make tucker, both quoted in secondary accounts from 1898-period sources; and John Bryce's characterisation of Parihaka as a headquarters of fanaticism and disaffection, as quoted by the Ministry for Culture and Heritage. Where a primary phrase reaches this study only through a modern encyclopaedia or heritage publication citing the original, that is stated rather than concealed, and none of these has been checked against the manuscript or the original serial.

Paraphrased from modern scholarship, briefly and with credit: Ian Pool on Māori population decline to the 1896 nadir; Judith Binney and colleagues on Māori landholding at 1891; the Stout–Ngata commission's findings for Cook County as

summarised by Te Ara; Te Ara's account of Ngāti Porou's land strategy under Rāpata Wahawaha and of the Tūranga tribes' proletarianisation; Hazel Riseborough on Parihaka as a haven for the dispossessed; the standard accounts of the Vogel programme and of the Liberal labour legislation.

Contested figures and uncertainties. Assisted migrants of the 1870s are given as about 100,000, within a total inflow of 289,026 between 1871 and 1886, of whom roughly 40 per cent moved on; the assisted proportion is stated as "almost half" in one source and the totals vary with the counting period. Māori population at the 1896 nadir: the Māori census returned 39,854 including 3,503 people of mixed descent living in tribes and 20 Moriori, while a further 2,259 people of mixed descent were counted in the main census, which is why the nadir is variously given as just under forty thousand or just over forty-two thousand. Māori landholding: just under 11 million acres, about 40 per cent of the North Island, at 1891; about 10 per cent of the original tribal estates by 1900; about 9 per cent of the North Island by 1939 — three different bases of measurement that should not be read as a single series. Kauri gum reserves: about 100,000 hectares. Dalmatian return migration: about 60 per cent. Parihaka: about 1,600 troops, several thousand people present, ploughmen imprisoned in the hundreds, the last prisoners released in 1898; the figure of 2,000 present appears in some accounts and "several thousand" in others.

Outstanding verifications, flagged by name. The Tasman fare of about £2 comes from a genealogical compilation, not from a shipping record, and is used here only to indicate the order of magnitude. The specific poll-tax provisions applied to Chinese immigrants from 1881 have not been verified for this module and no figures are given; the broader pattern of statutory restriction from 1881 onward directed at Chinese, Indian, Samoan, Dalmatian, Italian and Jewish immigrants rests on a single secondary account. The claim that the Parihaka proclamation was signed some two and a quarter hours before Governor Gordon's return rests on a modern journalistic account of the episode. The Sim Commission testimony regarding rape at Parihaka is reported by the Ministry for Culture and Heritage as evidence given to the commission in the 1920s and is stated here as such.

MODULE 6

So Far as the Eye Can See

Extraction: what this order took, by what instrument, and where it went — a monopsony with one buyer, a court that charged the defendant for the trial, and a circuit of money running from London to a gum swamp and back

What this order did not take

Begin with the absences, because they define the shape.

New Zealand levied no hut tax on Māori and no poll tax. It imposed no labour requirement, no corvée, no forced cultivation of an export crop, no obligation to work a set number of days on a settler's holding. There was no head tax to be discharged in wages, which is the standard device by which a colonial state converts a self-sufficient cultivator into a wage labourer. Māori paid the same customs duties as everyone else on the same tea and tobacco, and after 1893 they were rated on their land like other owners, but there was no tribute of any kind and there was never, at any point, a distinct fiscal obligation attached to being Māori.

The reason is not restraint. It is that the colony had solved its labour problem by importing labour. A hundred thousand assisted migrants came in on the London loan market in a decade and a half; the men who dug the drains and laid the rails and shore the sheep had been recruited in Devon and Down and shipped out at public expense. A colonial state that must find hands where it stands has to reach into the native population and keep reaching, year after year, which is why such states end up counting, taxing, registering, pass-booking and doctoring the people they exploit. This one did not need to.

What it needed was ground. And ground is taken once.

That distinction is the spine of this module and it turns out to matter more than the amount taken, so it is worth stating before the arithmetic starts. **An order that extracts labour or tax has a standing interest in the population it extracts from — it needs those people alive, fed enough to work, resident, and countable, and that interest, however grotesque, is an interest.** An order that extracts land has an interest that terminates. When the transfer is complete the relationship is over, and the people on the other side of it are not being exploited any more. They are surplus. Which is a worse position, because a person being exploited has something the order wants and can therefore withhold, and a surplus person has nothing at all.

One buyer

The first instrument was the exclusive right of pre-emption, and the cleanest place to watch it work is the South Island, because there was almost no war there and almost no confiscation, so what happened happened entirely by contract.

Between 1844 and 1864 Ngāi Tahu passed something on the order of 34.5 million acres — roughly eighty per cent of the South Island — to the Crown, in a series of purchases, for a total of about £14,750.

The largest was Kemp's Deed, signed on 12 June 1848 aboard HM Sloop *Fly* in Akaroa Harbour by some forty rangatira. Henry Tacy Kemp, acting for the Crown, obtained the Canterbury block — reckoned at about twenty million acres on the wide reading of its boundaries and 13,551,400 acres on the narrow one — for £2,000. Work the arithmetic in the currency of the day and it is easier to feel: two thousand pounds is four hundred and eighty thousand pence, so on the wide reading a single penny bought something over forty acres, and on the narrow reading about twenty-eight.

The circumstances are on the record and were criticised in Wellington within weeks. Kemp had stayed ashore three days, had travelled no further than Akaroa, and had taken no maps with him, so no boundary was drawn and no reserve was marked; the northern and western limits of a purchase covering nearly a third of the country were described in terms as loose as *so far as the eye can see*, agreed on a sloop in a harbour from which one cannot see inland at all. He had been instructed to *"reserve to the natives ample portions of land for their present and prospective wants."* The reserves actually set aside came to 6,359 acres — an average of about ten acres a person, calculated from a census of 637 that did not count the people living at Kaiapoi or on Banks Peninsula. The lieutenant-governor of New Munster took him to task. The purchase stood.

The Otago transaction of 1844 had gone the same way at smaller scale: something between four hundred thousand and five hundred and thirty thousand acres for £2,400, with fewer than ten thousand acres reserved and a promise that a further tenth of the block would be set aside for the sellers' future prosperity. The tenth never came, and its absence became one of the founding grievances of the claim.

Thirty-one years after Kemp's Deed, a Ngāi Tahu leader who had been present at the signing put the matter to a royal commission:

> *"Kemp promised us reserves, we were to have our fisheries, our burial places, mahinga kai, eel weirs, anywhere, everywhere. The promises were made 30 years ago! Where is the fulfilment of them? Our mahinga kai were places where we*

used to get food, the natural products of the soil ... We used to get food from all over our island."

By the early 1900s fewer than two thousand Ngāi Tahu were living in their own rohe. The Waitangi Tribunal would eventually find the Crown had acted unconscionably; the claim settled in 1998 for $170 million and an apology.

Two things about that transaction should be held in view, because the temptation is to file it as fraud and the filing loses the mechanism. The first is that it was not illegal, and its price was not a swindle in the ordinary sense: it was the price a monopsony produces. Ngāi Tahu could sell to the Crown or to nobody, and a market with one buyer does not generate a price at all — it generates a figure the buyer proposes. That was not an abuse of pre-emption. It was pre-emption doing precisely what Lord Normanby had said in writing, six months before the Treaty, that it would do: the price paid to the natives would bear an exceedingly small proportion to the price the same land fetched on resale, and there was no real injustice in the inequality. The second is that the promises about reserves, fisheries and food-gathering places appear to have been made in good faith by men who did not have the authority to keep them and were not held to them by anybody.

The extraction that did not pay

Then came the confiscations, and they are the one large extraction in this study that failed on its own terms.

The New Zealand Settlements Act of 1863 was to fund the war out of the land it took: seat military settlers on part of the seized ground, sell the rest on the open market, and let the proceeds cover the whole undertaking. It did not work. The land lay in districts that were still dangerous, the military settlers on it had no capital and largely walked off, and the market did not come. The colony had borrowed three million pounds against the expectation and had to service the debt regardless.

The Colonial Treasurer, Francis Jollie, put the consequence to the provinces in 1866. They could no longer expect their old three-eighths share of the customs revenue, he told them, *"in the altered circumstances of the country consequent upon the immense efforts it has made during the last three years for suppressing Native disorder and rebellion,"* and they should rely more and more upon their own local revenues.

That sentence is worth pausing on. The provinces were being told to fund themselves because the colony had spent itself into difficulty invading the Waikato, and would be recouping the difference from the customs house. Which means the settler

common man — the one on the recruiting poster — paid, in duty on his tobacco and sugar, for a war fought to obtain land that the men who obtained it could not sell.

The court that charged the defendant for the trial

Because the confiscation had failed as a revenue instrument, the mechanism that mattered had to be something else, and it was.

Henry Sewell, back in office in 1865, said what the Native Land Court was for with a candour nobody has improved on. It was designed, he told the House, *"to destroy if possible, the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Native race into our own social and political system."*

Māori named it *te kōti tango whenua*, the land-taking court. What follows is how it took, and the striking thing is that it did not have to rule against anybody.

The court could not consider a block until the block had been surveyed, and the owners paid for the survey. This single requirement did most of the work. Survey costs commonly ran to twenty or twenty-five per cent of a block's value; one reconstruction of Crown purchasing in the central North Island puts the average share of sale proceeds consumed by survey at twenty-one per cent, and in some cases the survey ate nearly the whole of the proceeds. Nor could the owners shop around: an official report on surveys observed that the Māori claimant *"is obliged to find some one to survey his land on credit, and so often pays double what it cost a European."* Indebtedness was therefore the precondition of even entering the process.

Attendance was compulsory and the sittings were held elsewhere. Anyone with an interest in a block had to be present, and hearings were routinely convened at a distance from the claimants' homes, in towns where they had no kin and no gardens. Sittings ran for weeks and sometimes months. The owners paid for their own travel, food and lodging throughout, earning nothing, while the case they had come to defend crawled forward.

Every hearing carried fees, and unpaid fees became charges on the land. Appeals cost more.

And a whole economy assembled itself around the courthouse door. Te Ara's account of the period describes claimants as prey to *"a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land-agents and money-lenders."* Individual grantees were offered unlimited credit by Pākehā storekeepers, which continued, in Angela Ballara's account, until the debts had mounted to proportions that could only be settled by mortgaging or selling. At a sitting held at Cambridge in the Waikato in 1882, the expenses were so great that the value of the land was absorbed by them; in the

extreme instance reported to Parliament, a company that had supplied the claimants with provisions rendered a bill equal to the value of the block. *"There was nothing left for the Natives."*

The case that states the whole mechanism in one life is Renata Kawepo of Ngāti Kahungunu, who fought a series of actions against land speculators in Hawke's Bay and won them — and then had to sell much of the land to pay his legal and living costs. He was not defeated in court. He was billed.

That is the instrument, and it deserves to be named precisely, because it is cheap, deniable and legally impeccable in a way that confiscation never was. **The state did not have to take the land. It only had to make defending the land cost more than the land was worth.** Every survey was genuinely necessary; every fee was lawfully imposed; every storekeeper's bill was honestly incurred for goods actually supplied. There is no villain anywhere in the paperwork, and a man who fought and won came out with less than a man who had sold at once — which is a fact any community learns quickly and acts on.

Two later adjustments made it work faster. In 1873 the ten-owner limit was removed and all owners were to be listed on a memorial, which sounds like a correction of an injustice and functioned as an accelerant: with every owner holding an individual undivided interest, a buyer no longer needed a community's agreement, only a few individuals' signatures, after which he could apply to partition and force the rest. And in 1894 the Native Land Court Act restored the Crown's right of pre-emption, which lasted until 1909 — although by then the Crown was already buying most of the large blocks anyway and the clause was routinely waived where a private purchaser was preferred.

Rates completed the encirclement in the twentieth century. Māori land was rateable, county councils were the instrument of Pākehā farming districts, and owners of undeveloped land held in fragmented shares frequently could not pay. Under the Native Land Rating Act 1924 councils obtained charging orders against blocks in arrears — orders that prohibited further dealings until the rates were paid, which meant, as one Tribunal researcher observes, that the charged land became inalienable, so its owners could not even sell it to discharge the debt except, in practice, to the Crown.

By the early twentieth century about two million hectares out of twenty-seven remained in Māori ownership. By 1939, Māori held about nine per cent of the North Island.

Where the money went

Now trace it, because the destination is not the one the colonial model predicts.

The colonial state's revenue was overwhelmingly customs. In 1875–76 customs duties supplied sixty-nine per cent of a total revenue of about £1.8 million. They had fallen to forty-two per cent by 1880–81, when railways and the Post Office brought in thirty-four per cent and the property tax seven; and even after the Liberals introduced land and income taxes in 1891, customs still supplied forty-nine per cent of non-trading revenue against nineteen per cent from the new taxes. Duties fell on spirits, tobacco, flour, sugar and the ordinary contents of a household. Land sales were the other main source and were declining by the late 1870s as the government ran short of land to sell.

Against that revenue stood the debt. The public accounts show a public debt of about £28.7 million in 1881–82 and £29.9 million the following year, in a country of half a million people. In 1880–81 the service of the overseas debt took about twenty per cent of the colony's export earnings; by 1913–14 it was down to about ten. And in 1875–76, apart from debt service, the only item of non-trading expenditure above £100,000 was the Armed Constabulary.

Put the circuit together. London bondholders lent the money. The money built the railways and roads that opened the interior and dissolved the aukati. The opened land was bought cheap under one instrument or another and resold to settlers. The settlers' tea, sugar and tobacco paid the customs duty that serviced the loan. And the interest went to London — not to the British Treasury, which levied nothing on this colony and took no tribute of any kind, but to private holders of colonial stock.

So the metropole's position in this case was that of a creditor rather than a landlord, and that is a structurally different relationship. A landlord metropole wants its colony administered so as to maximise a flow it receives directly, and will pay to keep it. A creditor metropole wants the interest paid and is otherwise indifferent — which explains, better than any account of imperial sentiment, why London was willing to hand over native affairs, why it declined to garrison the colony except at forty pounds a head, and why it let a settler ministry conduct a war it privately disapproved of. As long as the coupon was met, the rest was the debtor's business.

And then, on the last day of 1881, the *Dunedin* sailed from Port Chalmers with a cargo of frozen mutton, and arrived in London the following May with most of it sound. Refrigeration changed what the country was for. Wool and tallow and gold gave way to meat, butter and cheese; the land that had been extracted began to be worked; and the economists note where the produce went, which is the detail that closes this

study's circle. New Zealand foodstuffs found their way onto the tables of British working-class families, because the middle and upper classes could afford fresh.

The joints of mutton painted on a recruiting sheet in an English village hall in 1873, to persuade an agricultural labourer that a man could eat meat every day if he emigrated, arrived on the tables of the men who had stayed, about twelve years later. Getting them there had cost a country.

Reading extraction against the framework

The first finding is the difference between an order that needs the native's labour and one that needs only his ground, and it is the contribution this module makes. Nearly every colonial case on the collection's shelf extracts something recurrent — a hut tax, a labour obligation, a compulsory crop, a share of the harvest — and recurrence creates a permanent interest in the extracted population. The order must keep those people alive, fed enough to work, resident where they can be found, and countable, and it will build clinics and famine relief and censuses to that end, not out of benevolence but because a dead labourer pays no tax. New Zealand extracted land, which is terminal. Once the transfer was complete there was no further interest, and the population on the other side of it stopped being exploited and became surplus.

That is a worse position than exploitation and the difference should be stated plainly, because it is easy to get backwards. A person being exploited holds something the order wants and can therefore withhold it, strike, slow down, or bargain. A surplus person holds nothing. He has no leverage of any kind, and the order's rational posture towards him is not cruelty but indifference — which is why the extinction doctrine of the 1870s should be read not only as a robe but as a forecast made by people who had correctly understood that they had no further use for anybody, and which was self-fulfilling in the ordinary way, since a state with no stake in a population's survival does not spend on it.

The test is in the timing of the state's change of posture, and the record supplies it: from the 1920s the government showed markedly less interest in *buying* Māori land and markedly more concern that impoverished Māori might become a burden on the public purse. That is the precise moment the extraction ends and the extracted become a cost line — and it is the same decade in which Ngata got land development schemes moving, because a population that has become a fiscal item is one whose condition can at last be argued about in the language the Treasury understands.

The second is process cost as an extractive instrument, and it should go into the collection's toolkit as a named device. After 1865 this state confiscated comparatively little. It made the defence of land more expensive than the land: survey

at a fifth of value, paid by the owner and priced at double the Pākehā rate because he had to buy it on credit; compulsory attendance for weeks at sittings held deliberately far from home; fees charged against the block when they could not be paid; and a ring of storekeepers, publicans and money-lenders extending credit at the courthouse door. **Where title must be proved before an official body, the cost of proving is itself an extraction, and it can be set high enough to accomplish the transfer without a single adverse ruling being made.** Renata Kawepo won and lost the land anyway. That instrument produces no martyrs, no massacre, no order in council anyone can point to, and an archive in which every individual transaction is lawful.

The third is a warning about a claim the collection has been accepting. The confiscations of 1863–65 were designed to be self-financing and were not: the ground did not sell, the settlers walked off it, and the three-million-pound loan had to be met out of customs paid by the ordinary settler household. **A conquest's claim to pay for itself is made in advance, by the men proposing it, and is almost never audited afterwards** — and where the collection has taken such a claim at face value it should go back and look for the loan account.

And the fourth concerns what kind of stake the metropole actually held. The standard colonial reading has the metropole extracting from the colony and losing interest when the extraction stops paying. Here nothing was extracted at all in that sense: no tribute, no imperial levy, no remitted revenue. What ran to London was interest on private lending. That makes the metropole a creditor, and a creditor is indifferent to how the debtor conducts his affairs so long as the coupon is met — which accounts for the whole shape of the imperial relationship traced in this study, from the willingness to hand over native affairs in the 1860s, through the refusal to garrison except at a stated price per head, to the complete absence of any attempt to reverse a settler policy London had itself described as unjust. **When the framework predicts that a colonial order ends because the metropole's will empties, it should first ask what the metropole's stake was, because a creditor's will never has to empty. It only has to be repaid.**

A note on sources. Quoted exactly from public-domain primary material as transmitted: Henry Sewell's statement of 1865 that the Native Land Court was designed to destroy if possible the principle of communism running through Māori institutions, as quoted by the Ministry for Culture and Heritage; Francis Jollie's 1866 statement to the provinces on the three-eighths of customs and the immense efforts made in suppressing Native disorder and rebellion, as quoted by Te Ara; the Crown's instruction to Kemp to reserve to the natives ample portions of land for their present and prospective wants, quoted by Te Rūnanga o Ngāi Tahu; the 1879 royal

commission testimony of a Ngāi Tahu leader present at the 1848 signing, on the reserves, fisheries, burial places and mahinga kai promised by Kemp, quoted by Te Ara; the surveys report of 1867 that the claimant is obliged to find someone to survey his land on credit and so often pays double what it cost a European, quoted in a scholarly article from AJHR 1867 A-10B; the phrase describing claimants as prey to a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land-agents and money-lenders, and the report of the Cambridge sitting of 1882 ending with the observation that there was nothing left for the Natives, both quoted by Te Ara from period sources. None of these has been checked against the original serial or manuscript, and the chain is stated here because several are doing argumentative work.

The public accounts figures for 1881–82 and 1882–83 are from the Appendices to the Journals of the House of Representatives as digitised on Papers Past; the revenue proportions and debt-service ratios are from the 1966 *Encyclopaedia of New Zealand*.

Paraphrased from modern scholarship, briefly and with credit: Michael Macky's reconstruction of Crown purchasing in the central North Island for the survey-cost proportion; Angela Ballara on credit extended to individual grantees until debts could only be discharged by mortgage or sale; M. P. K. Sorrenson on land purchase methods; R. P. Boast and T. J. Hearn on the rating of Māori land and the effect of charging orders under the Native Land Rating Act 1924; Alan Ward on nineteenth-century amalgamation policy; the EH.net economic history for the observation that refrigerated New Zealand produce reached British working-class rather than middle-class tables.

Contested figures, given with their spread. The Canterbury purchase of 1848 is stated at about 20 million acres in the Crown's own mapping and at 13,551,400 acres in Ngāi Tahu's account, the boundaries never having been properly defined; the derived price per acre is given here on both readings. Total Ngāi Tahu alienation 1844–1864 is given as about 34.5 million acres, roughly 80 per cent of the South Island, for about £14,750. The Otago purchase of 1844 is variously given as more than 400,000 acres and as 534,000 acres, for £2,400, with reserves given as fewer than 10,000 acres or about 9,600. Reserves under Kemp's Deed: 6,359 acres, calculated on a census of 637 people that omitted Kaiapoi and Banks Peninsula. Survey costs: 20–25 per cent of block value generally, with 21 per cent as the reconstructed average for the central North Island. Māori landholding: about 2 million hectares of 27 million by the early twentieth century; about 9 per cent of the North Island by 1939 — different bases, not a single series. Public debt: £28,738,011 at 31 March 1882 and £29,927,111 the following year, per the public accounts.

Outstanding verifications, flagged by name. The characterisation of Kemp's Deed boundaries as having been described in terms such as "so far as the eye can see" — from which this module takes its title — reaches this study through modern accounts of the transaction, including one from Ngāi Tahu's own publications, rather than from the deed itself, which has not been read here; that the boundaries were undefined and that Kemp carried no maps is not in dispute. The resale prices obtained by the Crown and the Canterbury Association for South Island land have not been established for this module and no resale ratio is asserted. The 1875–76 statement that the Armed Constabulary was the only non-trading expenditure over £100,000 apart from debt service comes from the 1966 *Encyclopaedia* and has not been checked against the estimates.

MODULE 7

The Sparrow Alone Upon the House-Top

Information and suppression: a government that answered a newspaper by founding a newspaper, a state that hid nothing from anybody, and the one occasion on which it bought a censor — in 1951, against its own dockworkers

What was looked for

The collection has run this station across a long row of colonial orders and come back with the same result each time: the censorship apparatus, where it existed at all, faced inward at the conquered, and toward the metropole there was almost nothing — not because concealment succeeded but because it was never attempted. The facts travelled. They were printed in official reports, laid before parliaments, sold at one and threepence, and they moved nothing. The rule that came out of that work is the sharpest single instrument the collection owns: **what a regime bothers to hide is a map of what its audience would actually punish.** Suppression is expensive; nobody buys it where inattention is free.

New Zealand is a useful place to test that, because it offers something the cross-case comparison cannot: variation inside one state. This colony had a metropolitan audience that was genuinely watching for about twenty-five years and then stopped watching, by statute, at a date that can be given. And seventy years after it stopped, the same state built the heaviest censorship apparatus in its history — against a population that had nothing to do with any of this.

The years the column was not empty

Between the late 1830s and the mid-1860s the metropolitan sensor in this case was live, and its liveness is measurable in exactly the way the collection says such things are measurable: in the elaboration of the instruments.

The Colonial Office did not want the country and said so in the founding despatch. A Commons select committee on the treatment of indigenous peoples had reported. Exeter Hall was in full voice. And the colony contained a body with its own line to London: the Church Missionary Society reported to its own committee, not to the Governor, and its men wrote home continuously, often to the effect that settlers were robbing Māori and the government was permitting it. That channel could not be

closed by any governor, which meant no New Zealand despatch was ever the only account of New Zealand reaching Downing Street.

The consequences were real and should be counted honestly. The Treaty exists because of that audience. So does Crown pre-emption, so does the protectorate department, and so does the elaborate procedure by which five hundred and forty signatures were gathered across fifty locations by men with no soldiers. When the settler ministry asked London for three million pounds in 1864, Parliament declined to advance the full sum. Imperial officers, Lieutenant-General Cameron among them, queried in writing why imperial soldiers should be fighting a war of conquest for the benefit of colonial land interests. Governor Gordon, twenty years later, was furious to discover that the Parihaka proclamation had been signed while he was at sea, precisely because everyone concerned knew he would not have signed it.

None of that is nothing. For a quarter of a century this order was operating in front of a reader who could and occasionally did impose a cost.

And yet the column was empty anyway

Now apply the diagnostic. Across that whole period and the fifty years after it, what did this order actually bother to *hide* from London?

Very little, and nothing important. The proclamations of sovereignty went into the *London Gazette*. The New Zealand Settlements Act and the Suppression of Rebellion Act were passed in open session on the same December day in 1863 and printed. Grey's ultimatum to the Waikato chiefs was public. The parliamentary debates were published. The Colonial Office read the statutes that authorised confiscation and courts-martial and summary execution, and approved them.

The purest specimen is from 1880. Several hundred men from Parihaka were then in South Island gaols, held without trial, for ploughing. In August of that year the Crown's own West Coast Commission reported that these men were being held *"not for crimes, but for a political offence in which there is no sign of criminal intent."*

That is the Crown's own inquiry, in its own report, stating that the government of New Zealand was holding hundreds of men in prison for a political offence involving no criminal intent. It was published. The imprisonment continued. There is no better New Zealand parallel to the Northern Nigeria annual report in which Lugard told Parliament, for one shilling and threepence, that the emancipated slaves had been sent back — and Parliament asked no question.

The same pattern repeats down the century. The Sim Commission of the 1920s heard evidence, including evidence that women had been raped by troops at Parihaka, and reported. The Stout–Ngata commission of 1907–08 documented Māori

landlessness and was overridden by the ministry that had appointed it. In each case the damaging fact was established by the state's own machinery, printed, and then simply absorbed.

So the metropolitan column here is empty for the ordinary reason, and the case adds something to the finding rather than contradicting it. **The seam was open and the order was not damaged.** The missionaries wrote home for fifty years. Swainson, Sewell and Gorst published their dissent in London in 1862, 1864 and 1864 respectively — three former officers of the colonial government, one of them a former premier, all three arguing in print in the imperial capital that the wars were unjust. The two ends of the seam met, in London bookshops, and the arrangement carried on exactly as before.

Which disposes of a hypothesis the collection has been carrying. Distance was never the mechanism. It cannot have been, because in this case the distance was routinely bridged and made no difference. Indifference was the mechanism, and indifference works at any range — as the same century demonstrated inside the colony, where a settler public four hundred miles from Taranaki, reading its own newspapers in its own language, was no more moved than London had been.

The one occasion this state argued

There is, however, one episode in which the government of New Zealand behaved as though somebody's belief mattered, and it is the most interesting eighteen months in the whole information record.

In 1859 two Waikato men, Wiremu Toetoe Tumohe and Te Hemara Rerehau Paraone, travelled to Vienna aboard the Austrian frigate *Novara*, learned the printing trade there, and were offered a farewell gift by the Emperor's brother. They asked for a printing press. They brought it home in 1860, and from late 1861 it was used at Ngāruawāhia to print *Te Hokioi e Rere Atu Nā* — the soaring war bird — the first newspaper in te reo Māori produced entirely by Māori. Its issues carried the acknowledgement *Te perehi aroha noa o te Kīngi o Ātiria*, the press given with affection by the King of Austria. Its editor and principal writer was Wiremu Patara Te Tuhi, and the first editorial made the point of the whole enterprise: the advantage of a press was that it could carry their opinions to the peoples of the world. Te Tuhi carried the proclamations of King Tāwhiao and argued, in print, for a reading of the Treaty of Waitangi that limited the colonial government's sovereignty over Māori.

Governor Grey's response to that newspaper was not to suppress it. It was to found one.

In February 1863 the government set up a rival Māori-language paper at Te Awamutu, on a press bought in Sydney, edited by the resident magistrate John Gorst and printed by a man who had learned the trade on Bishop Selwyn's press. It was called *Te Pīhoihoi Mokemoke i Runga i te Tuanui*, taken from Psalm 102, verse 7: *I watch, and am as a sparrow alone upon the house-top*. Its argument was Grey's own — that there could not be two governments in authority over one country.

The exchanges were sharp and personal. Gorst's leader, headed "The Evil of the King Movement," answered a letter Tāwhiao had written to the Governor on 8 December 1862 asking what evil the King had done and on what account he was blamed. Gorst's answer was translated into forceful idiomatic Māori by the daughter of the missionary at Kaitotehe. Neighbours began to ask why the troublesome printing-press was allowed in their midst.

On 24 March 1863, eighty armed men led by Rewi Maniapoto and Āporo Taratutu walked into Te Awamutu, went to the office of the government newspaper, and took the press, the type, the paper and the copies of the fifth issue. Gorst was ordered out of the Waikato. On his way back to Auckland he was put up for the night by Patara Te Tuhi, in the printing house at Ngāruawāhia where *Te Hokioi* was produced. The two men became friends and remained so for the rest of their lives.

Four months later Cameron's troops crossed the Mangatāwhiri.

Several things in that episode are worth extracting, and the first is simply the direction of travel. The only physical suppression of a printing press in the whole of this story was carried out by Māori, against the government, on 24 March 1863. There is no corresponding episode running the other way. The colonial state never banned a Māori newspaper, never licensed the Māori press, never established an index or a censor's office for Māori publications; Māori-language papers, government and independent and Kīngitanga alike, ran through the whole period and are now a substantial archive.

The second is what founding *Te Pīhoihoi* concedes. A government that answers a newspaper with a newspaper has conceded that its opponent's readers are an audience whose belief is worth buying. That is not what the colonial model predicts. The standing rule is that the colonial robe is cut for the metropole and not for the conquered, because the conquered are held by force and are not asked to believe anything. For about eighteen months in 1862 and 1863, the government of New Zealand was trying to sell its robe to the conquered, in the conquered's own language, in print, on a press it had bought for the purpose.

Why? Position logic answers it. Grey had no floor adequate to take the Waikato quickly; the Kīngitanga was not a rebellion but a rival government with a flag, a code of

laws, magistrates and a newspaper; and — the decisive fact — the missionaries had made Māori literate in their own language a generation before the Crown arrived, so an audience existed to be argued with. **A formation the order did not install had produced a public the order then had to address.**

And the invasion is the moment it stopped. What ended in March and July 1863 was not merely the newspaper war but the entire project of persuading Māori of anything. After that the instruments are all statutory.

What the suppression was, and where it pointed

This state never built a censor. It built statutes, and it published them.

The Suppression of Rebellion Act of 3 December 1863 provided courts-martial and summary execution for those assisting rebellion, and was passed on the same day as the confiscation statute.

Sixteen years later, faced with men ploughing surveyed land in Taranaki, the machinery ran again and left an unusually clear record because it had to be built in stages. By the end of July 1879, 182 ploughmen had been arrested. In early August Parliament passed the Māori Prisoners' Trials Act, whose preamble stated that it was necessary for *"the ordinary course of law [to] be suspended"* so that the Crown could alter the time and place of the prisoners' trials if *"for any reason, it is expedient."* The trials were then postponed, and postponed again. In December the Confiscated Lands Inquiry and Maori Prisoners' Trials Act extended the arrangement. In January 1880 the prisoners held in Wellington were moved to Dunedin and Hokitika. In July 1880 the Māori Prisoners Act dispensed with trials altogether, providing that *"All the said Natives so committed for and waiting trial ... shall be deemed and taken to have been lawfully arrested and to be in lawful custody, and may be lawfully detained."* And on 1 September the West Coast Settlements (North Island) Act made ploughing, fencing and the removal of survey pegs criminal offences and authorised any armed constable to arrest without warrant anyone interfering with a survey or obstructing a road. Fifty-nine fencers were arrested three days later and given two years' hard labour; the last seven were sent to Lyttelton without trial at all. In total the Crown imprisoned 405 people — 182 ploughmen and 223 fencers — for the peaceful resistance of 1879 and 1880.

When the troops went into Parihaka on 5 November 1881, Bryce officially excluded the press from the scene. Te Whiti and Tohu were charged with sedition. An indemnity order was issued covering everyone who had acted on the Crown's behalf.

And a generation later the same instrument was turned on the authority structure itself. The Tohunga Suppression Act 1907 made it an offence to practise as a tohunga,

with a fine of up to twenty-five pounds or six months' imprisonment for a first offence and up to a year thereafter, and repealed the provision of the Maori Councils Act 1900 under which Māori councils had been able to licence tohunga. No prosecution could be brought without the consent of the Native Minister — which tells you the Act was understood, by its own drafters, as a political instrument rather than a public health measure.

Read that sequence for what it is. It is not censorship. Not one line of it is directed at what could be printed, said, or known. It is the suspension of the ordinary law for a single named population, enacted in open session, printed in the statute book, and laid before a Parliament in which four Māori members sat. The state was not concealing the suspension of habeas corpus. It was legislating it, and then publishing the legislation, and then having its own commission report that the prisoners were political and holding them anyway.

Which is the empty column at its purest. The rule says a regime buys suppression only where its audience's tolerance runs below the fact. This regime bought none at all, from anybody, because after about 1870 no audience existed that would act on knowing — not in London, which had become a creditor and wanted only its coupon, and not in Auckland or Christchurch, where the electorate approved. The measure of that is not that nothing was hidden. It is that the government could state in a published report that four hundred men were imprisoned for a political offence, and nothing whatever followed.

When the censor finally arrived

New Zealand's real censorship apparatus was built in 1951, and its target was Pākehā.

The waterfront dispute of that year was the largest industrial confrontation in the country's history: up to twenty-two thousand workers off the job at its peak, for a hundred and fifty-one days from February to July. Sidney Holland's National government declared a state of emergency on 21 February and the Prime Minister told the country the following day that New Zealand was at war — not only in Korea but at home, against what he called a menace from the enemy within. On the 27th, soldiers and sailors were put onto the Auckland and Wellington wharves to work cargo.

The emergency regulations gave the government power to seize union funds, to prohibit strike meetings, and to ban the publication or distribution of anything supporting the watersiders' position. Police were given sweeping powers of search and arrest. It was made an offence for any citizen to assist a striker or a striker's family — including, explicitly, by giving food to their children, a provision the police in practice

seldom enforced but which existed and was known. The Labour MP Mabel Howard called the dispute a war on women, because the wives of strikers had to live on nothing and it was illegal for anyone to help them. At Clifton Terrace primary school in Wellington, the children of strikers were separated from the other pupils at playtime, in case they illegally shared their lunches.

The watersiders responded by printing illegal newsletters on hidden presses and distributing them through clandestine networks, which is what a population does when a state has finally decided that what it says matters.

Set that beside 1881 and the comparison does the module's work without any commentary. In 1881 this state destroyed a village, dispersed its inhabitants, imprisoned four hundred and five people without trial, and had its own commission report that the imprisonment was political — and did not suppress a single newspaper, ban a single meeting, or restrict a single publication, because it did not need to. In 1951 it faced an electorate, a divided but real labour movement, an opposition party and a press that might have acted, and it bought censorship, in peacetime, within a week.

Reading information against the framework

First: the empty column holds, and this case supplies the control that makes it a finding rather than an observation. Comparing colonies to one another always leaves the possibility that the difference lies in the colonies. Here it is one state, one archive, one statute book, seventy years apart. The variable that moved was not the gravity of what was being done — by any measure the destruction of Parihaka was graver than the loading of ships by soldiers — and it was not the regime's character, since the state that legislated the 1951 regulations was in most respects a milder thing than the one that legislated the Māori Prisoners Act. **What moved was whether an audience existed that would act on knowing.** Censorship intensity measures the audience's threshold. Nothing else in this record explains why the atrocity went unsuppressed and the strike did not.

Second, a correction to the seam's geometry that the collection should adopt. The standing account has the colonial seam running between two populations separated by an ocean, with the order's central information task being to keep the ends from meeting. This case shows the ends meeting constantly and the order taking no damage. The Church Missionary Society had an unbroken independent line to London for fifty years. Three former law officers of the colony, one a former premier, published their dissent in the imperial capital in the space of three years. The statutes were printed and the Colonial Office read them and approved. **The seam was open and it did not matter, which means distance was never the mechanism.**

Indifference was, and indifference has no minimum range: the same non-reaction operated among settlers in Christchurch, four hundred miles from Taranaki, reading about it in English in their own newspapers. Remove the ocean and nothing changes. The collection should stop treating concealment-by-distance as the default hypothesis and treat it as the rare case requiring explanation.

Third, and this is the new instrument: argument is a concession, and it dates the robe's change of addressee more precisely than any constitution. Grey answered *Te Hokioi* by founding *Te Pīhoihoi Mokemoke*. A government that buys a press and hires an editor to argue with the conquered in the conquered's own language has conceded that the conquered are an audience whose belief it still hopes to purchase — and that concession is inconsistent with the ordinary colonial arrangement, in which the conquered are held by force and asked to believe nothing. **Where a colonial state is found arguing in the conquered's language, it is in the last phase before it stops needing to.** Here the argument runs from February to March 1863 and the invasion follows in July. The date the argument stops is the date the robe changes addressee, and it is a sharper marker than responsible government in 1856 or the transfer of native affairs, because it is behavioural rather than constitutional. It is also worth noticing what made the argument necessary in the first place: a literate Māori public existed because missionaries had created it before the Crown arrived, so the state inherited an audience it had not made and briefly had to treat as one.

Fourth: where a public is compliant, an order does not control information, because a statute is cheaper than a secret. This state never established an index, a licensing board, a press bureau or a censor's office for Māori. It suspended habeas corpus for one named population by Act of Parliament; retrospectively deemed unlawful detentions lawful in the operative section of a statute; criminalised a plough, a fence and the pulling of a survey peg; indemnified its own agents; and outlawed a category of religious practitioner subject to ministerial consent. Every word of it was printed and debated in front of a Parliament that included Māori members. **A secret must be maintained, and maintenance is the expensive part; a statute maintains itself and can be cited.** The suppression map of this order therefore lies in the statute book rather than in any censor's file — and a researcher who goes looking for the censor's file will report, in perfectly good faith and completely wrongly, that this was an order which did not suppress.

A note on sources. Quoted exactly from public-domain primary material as transmitted: the West Coast Commission's finding of August 1880 that the Parihaka prisoners were held not for crimes but for a political offence in which there is no sign of criminal intent, as reproduced by a Taranaki-based documentary project citing the

Crown's own records; the preamble to the Māori Prisoners' Trials Act 1879 on the necessity that the ordinary course of law be suspended and that trials might be moved if for any reason it is expedient; section 3 of the Māori Prisoners Act 1880 deeming the detainees to have been lawfully arrested and lawfully detained, both as quoted in modern legal-historical accounts — the statutes are available on the New Zealand Legal Information Institute but have not been read against the originals for this module, and the quoted wording is therefore given as transmitted; the title of *Te Pīhoihoi Mokemoke i Runga i te Tuanui* and its derivation from Psalm 102:7; the acknowledgement carried in *Te Hokioi*, *Te perehi aroha noa o te Kīngi o Ātiria*; and Prime Minister Sidney Holland's characterisation of the country as at war and facing a menace from the enemy within, as quoted by the Ministry for Culture and Heritage.

Paraphrased from modern scholarship and reference works, briefly and with credit: the Dictionary of New Zealand Biography's account of Wiremu Patara Te Tuhi, including the seizure of the government press at Te Awamutu on 24 March 1863 by eighty armed men under Rewi Maniapoto and Āporo Taratutu, Gorst's expulsion, and Te Tuhi's accommodation of him at Ngāruawāhia; Te Ara on the Māori-language press and on the 1951 emergency regulations; the Ministry for Culture and Heritage on the 1951 dispute; James Cowan's *The Old Frontier* for the circumstances of the *Pīhoihoi*'s establishment and the content of Gorst's leader; the Wikipedia summary of the Tohunga Suppression Act 1907 for its penalties and its repeal of the licensing provision of the Maori Councils Act 1900, which has not been checked against the statute.

Contested figures and uncertainties. The number imprisoned in the Parihaka campaigns is given as 405 in total — 182 ploughmen and 223 fencers — by an iwi historical account; other accounts give "several hundred" without a total. *Te Hokioi* is variously dated from late 1861 and from January 1862, and its run is given as nine issues, ending May 1863. *Te Pīhoihoi Mokemoke* ran to four or five issues depending on whether the seized fifth is counted; sources disagree, and accounts also differ as to whether the seized press was shipped to Auckland or thrown into a river, the press now held by the Alexander Turnbull Library being said to be the same machine. Peak participation in the 1951 dispute is given as 20,000 or 22,000 depending on the source; its duration as 151 days.

Outstanding verifications, flagged by name. The Māori Prisoners' Trials Act 1879, the Māori Prisoners Act 1880 and the West Coast Settlements (North Island) Act 1880 are all available in full on NZLII and should be read directly before this module is finalised, since three of its load-bearing quotations come from them at second hand. The findings and recommendations of the Sim Commission of 1926–28, and what the government did with them, have not been researched for this module and are referred

to here only in general terms. Whether the emergency regulations of 1951 prohibited assistance to strikers by name or by general wording has not been established from the regulations themselves.

MODULE 8

The Land Was Obtained in Large Areas by Capitalists

The default: why men who despised each other held the same arrangement up without once agreeing to — a single instrument behind every title in the country, a state that took from one party and bought from the other, and four seats made permanent by the self-interest of the men who did not want them

Who was actually in it

A durable arrangement is one in which each member, pursuing nothing but his own advantage and requiring no instruction, thereby defends the whole. The test is not whether the members like each other. Very often they do not, and in this colony they conspicuously did not: the Canterbury runholder regarded the Auckland land-jobber as a spiv, the Auckland man regarded the runholder as an idle rentier, the small farmer wanted both of them broken up, and the urban artisan disliked all three. The question is why a set of people in open and continuous conflict nevertheless produced, for a century and a half, no serious challenge to the thing that had made every one of them.

The hierarchy in question had roughly seven tiers, and they should be named before the mechanism is.

At the top, in terms of acreage, the pastoral runholders of the eastern South Island, the Wairarapa and Hawke's Bay — men holding thousands of acres, usually on Crown lease and in exceptional cases freehold, of whom William Robinson, master of eighty-four thousand acres of the Cheviot Hills by 1862, was the type. Alongside them, and quite distinct, the Auckland financial and political set — Frederick Whitaker and Thomas Russell above all, ministers who drafted the confiscation policy in 1863 and then bought up the sections the military settlers abandoned. Beneath them the provincial politicians, superintendents and councillors with their own revenues and their own patronage, until 1876. Then the professional apparatus that grew around the Native Land Court: judges, surveyors, interpreters, lawyers, land agents, storekeepers and money-lenders. Then the banks, of which the Bank of New Zealand had become, by 1894, the largest landowner in the country through depression foreclosures. Then the small farmer, who became the decisive electoral bloc after 1890. And finally a thin

Māori tier — four members of Parliament from 1868, assessors, pensioned kūpapa chiefs, and eventually ministers of the Crown.

Now the mechanism, which is simpler than the list.

One instrument, behind everything

Every Pākehā interest in land in New Zealand derives from a Crown grant. Every Crown grant derives, at some remove, either from a confiscation proclamation made under the New Zealand Settlements Act or from a finding of the Native Land Court. There is no third source. A runholder's lease, a dairy farmer's freehold, a bank's mortgage security, a borough's rates base, a solicitor's fee for conveyancing, a surveyor's living — all of them rest on the same foundation, and none of them can be examined without the foundation being examined too.

That is the whole default, and it needs no more machinery than that. The Cheviot runholder and the Taranaki dairyman had nothing in common and wanted opposite things from the state; but if a court had ever held that a confiscation proclamation was invalid, or that a Land Court certificate could be reopened on the ground that the ten named owners had never been entitled to sell, the chain behind both their titles would have been in question on the same afternoon. Neither man ever had to think about this, and the evidence is that they did not. They simply defended their own farms, and in defending their own farms defended the confiscation of the Waikato, the survey liens of the King Country and the twenty million acres bought for two thousand pounds at Akaroa.

The legal expression of that alignment arrived in 1877, and it reads very differently once it is understood as a default instrument rather than as a piece of judicial racism. *Wi Parata v Bishop of Wellington* held that the courts could not inquire into native title at all. Read for its doctrine, the judgment is a statement about the incapacity of tribes to hold sovereignty. Read for its function, it is a single sentence protecting every land title in the country from examination, and it was decided in the year after the Piako Swamp scandal and a year before the Native Land Court would begin sitting on the King Country blocks. Once inquiry was foreclosed, no member of the hierarchy needed a view about the Treaty, because no view was available to be acted upon.

The compact that made every provincial politician a land agent

The default was installed fiscally as well as legally, and the instrument was the compact of 1856.

Under it, *all* revenue from the sale of Crown land went to the provinces, together with three-eighths of the customs revenue. A provincial superintendent's roads, his schools, his immigration schemes, his officials and his own political standing were funded out of land sales. He did not have to hold any opinion whatever about Māori, the Treaty or the wars. He had a payroll to meet, and the only substantial asset his province owned was land that the Crown had acquired from Māori and would sell on to settlers.

The output is visible in the aggregate: over the twenty years to 1876, provincial land legislation disposed of something like eight million acres by sale and a further two million acres by free grant, the grants going mainly to men who had served in the military forces. So a whole tier of the political system spent a generation converting the extraction into schools, wharves and roads that its own electors used, and every elector who used them acquired, without knowing it, a small stake in the transaction that had produced them.

The apparatus that was paid by the process

Below the politicians sat a professional class whose income depended not on any outcome but on throughput.

The surveyor was paid a fifth of a block's value, on credit, at rates a government official conceded in 1867 were roughly double what a European would have paid. The lawyer was paid by both sides. The interpreter was paid by the sitting. The storekeeper and the publican extended credit for the duration of a hearing that might run for months, secured on the land under adjudication. G. S. Cooper, a government official, reported in 1867 that Hawke's Bay rangatira were *"allowed, and are indeed sometimes tempted"* to take credit *"to an extent almost incredible,"* and then, *"seeing no other means of raising the money, they have begun to sell their lands in every direction."*

And at the head of the court sat Francis Dart Fenton, its first chief judge, who dealt with Parliament's intention that the ten named owners should hold as trustees for the rest of their people by simply ignoring it, on the view that communal ownership was not what the 1865 Act had been for. Nobody instructed him to do that. The position did not require an instruction. A judge whose court's whole purpose was to make land saleable, and around whose court an entire local economy of fees had assembled, will find that the trustee reading creates difficulties and the absolute-owner reading does not.

The three fights that changed nothing

The proof of a default is not the absence of conflict. It is that severe conflict, honestly fought, leaves the instrument untouched. This hierarchy had three real internal fights and the instrument survived all of them without being mentioned.

The provinces, abolished in 1876. Vogel's borrowing had shifted the fiscal centre of gravity to Wellington, and the provinces — which had been the primary units of settler government for twenty-three years, with their own superintendents, councils and revenues — were simply abolished. An entire tier of the hierarchy ceased to exist. Nothing shook, because the men in it moved to the General Assembly, their land titles were not affected by a word of it, and central government took over the assets. A hierarchy that can delete one of its own storeys without disturbing the foundations has told you where the foundations are.

Piako Swamp, 1876–77. The opposition, led by Sir George Grey, blocked the sale of the Piako Swamp to a syndicate headed by Thomas Russell, on the ground that a direct sale of confiscated Māori land was unlawful and that the government was favouring a wealthy banker who was also a political ally. This is the sharpest intra-hierarchy scandal of the era, and the thing to notice is the shape of the objection. It was not that the land had been confiscated. It was that a particular insider was getting it on particular terms. The dissent was about distribution among Pākehā, and it was raised by a man who had himself, as Governor, ordered the invasion that produced the confiscation.

The great estates, 1891–1912. The most serious of the three, and the one that yields the module's central arithmetic.

The Liberals came to power in 1890 on a platform of closer settlement, and John McKenzie, Minister of Lands from 1891, set out to burst up the great holdings. A mildly graduated land tax replaced the property tax in 1891. The Land for Settlements Act of 1892, strengthened in 1894, gave the government power to buy private estates for subdivision, compulsorily if need be. The first great purchase was Cheviot — 84,755 acres in North Canterbury, acquired in 1893; the night after it passed into government ownership the stables, granary and store burned down. Between 1892 and 1911 the Crown offered three and a half million hectares for settlement in thirty-three thousand holdings, and cheap state credit followed under the Advances to Settlers Act of 1894.

Now the figures that matter. Between 1891 and 1912 the government acquired 223 estates — nearly 1.3 million acres — at a cost of £5.95 million. That is something over four and a half pounds an acre. Compulsory acquisition was rare; most owners sold

voluntarily, many because meat and dairy prices after 1895 made a sale into a rising market attractive, and most vendors kept part of the estate for themselves.

Set that beside the transaction this study has already established. In 1848 the Crown acquired the Canterbury block — some twenty million acres, in the same island — for two thousand pounds. Two thousand pounds is four hundred and eighty thousand pence: about one fortieth of a penny an acre.

The same state. The two policies overlap in time, because the Crown was still buying Māori land under restored pre-emption in the very years it was paying four and a half pounds an acre to break up Canterbury runs. When this state took land from Māori it took it, at a price it set as sole buyer, and when it took land from settlers it bought it, at market, mostly by agreement, and left the seller his homestead. The ratio between the two prices runs into the tens of thousands to one, and the variable is not the era, not the quality of the land, and not any change of heart. It is membership.

That is the sharpest measurement of a hierarchy the collection has produced, and it generalises: a hierarchy is defined not by what it does to outsiders but by what it will not do to its own. Find the two transactions in any order — the taking from a non-member and the acquisition from a member — and divide.

And the deeper point about the Liberal land reform is that it *strengthened* the default rather than straining it. The runholder lost his position and kept his money. The small farmer got his holding on a Crown lease with state credit behind it. Thirty-three thousand new holdings meant thirty-three thousand new households whose security depended on the finality of a Crown title, where before there had been a few hundred. The episode is normally told as the triumph of the small man over the squatter; structurally it is a repricing inside a hierarchy which converted a narrow and resented concentration into a broad and contented one, and left every participant holding an interest that traced back to the same court and the same proclamation.

There is a Royal Commission report of 1891 that states the hierarchy's only self-criticism with complete clarity. Of the Māori owners it observed that they *"were surrounded by temptation. Eager for money wherewith to buy food, clothes, rum, they welcomed the paid agents who plied them always with cash and often with spirits."* And then it gave its objection: *"such alienations were generally against the public interest, so far as regards settlement of the people upon the lands. In most of the leases and purchases effected the land was obtained in large areas by capitalists."*

The complaint is not that Māori lost the land. The complaint is that the wrong Pākehā ended up with it. That is very nearly the whole of the internal criticism this arrangement generated in its first eighty years.

Four seats, and the men who did not want them

The most instructive single episode in this module concerns the one part of the arrangement that was explicitly designed to be temporary.

The Māori Representation Act 1867 created four Māori seats in a House where population would have justified considerably more. Its provisions were supported chiefly because they were understood as temporary — in force for five years — and the reasoning was straightforward: article three had made Māori British subjects, but the ordinary franchise required a property qualification that Māori could not meet, because their land was held communally rather than individually. The Native Land Court was in the business of converting communal holdings into individual ones. Once that work was done, Māori would qualify on the ordinary basis and the special seats could go. Meanwhile, and as a consequence of this arrangement, every adult Māori man had the vote from 1867 — eleven years before Pākehā men, who remained subject to a property qualification until 1879.

After five years little progress had been made in individualising title, so in 1872 the arrangement was extended for another five. And in 1876 it was made indefinite — not because anyone had been persuaded that Māori deserved permanent representation, but because European members had worked out what abolition would do to them. Ending the separate seats would put an unknown number of Māori voters onto the European rolls, in districts where the margins were not large, and jeopardise the seats of the men who would have to vote for abolition.

Nobody coordinated that. There was no caucus decision that Māori representation was a good thing, no change of heart, no argument won. Each European member, sitting down privately with the numbers in his own electorate, arrived independently at the conclusion that four Māori seats were cheaper than an unknown quantity of Māori voters in his own contest — and the sum of several dozen such private calculations produced a permanent constitutional institution that nobody had advocated.

That is the default operating in its purest observable form, and it is worth noting what it produced: a real thing and a cap, at once. Four seats could not thereafter be removed, and there were never more than four until the law changed in 1996. Māori representation was simultaneously guaranteed and frozen, by the same mechanism, for a hundred and twenty years.

What the arrangement does to the people it admits

The men who held those seats, and the Māori who rose beyond them, are the other half of the finding.

James Carroll became Native Minister and, from about 1900, ran the *taihoa* policy — go slowly — using the office to delay further alienation. Āpirana Ngata, from the same Te Aute cohort, spent his career building land development schemes that put capital into Māori farming through the machinery of the Native Land Court and the Native Department. Māui Pōmare took public health. Te Rangi Hīroa took medicine and anthropology. All four were knighted or honoured; all four were unambiguously inside the hierarchy; and all four worked the instrument rather than attacking it.

It is easy and wrong to read that as collaboration. The honest reading is structural. Give a man a portfolio, and the department he now runs becomes the best lever available to him — better than any lever he had before, and worse than the lever he would have had if the arrangement had been different, but he does not get to choose among counterfactuals. Carroll could slow sales because he was Native Minister; he could not have slowed them from outside; and he could not remain Native Minister while attacking the foundation of every title in the country. Ngata could get capital to East Coast farms through the Native Department, and did, and the Native Department was the department that had been taking the land. The position defined the move.

Which is the second-cheapest thing a hierarchy can own: the capacity to admit its opponents individually, on terms. An arrangement that can promote its critics does not have to defeat them, and does not have to watch them either. It explains a great deal about why this order never built the surveillance apparatus that a purely excluding one requires — and it explains why the resistance that mattered in the end came from outside the hierarchy altogether, from people who had never been offered anything.

Reading the default against the framework

First, and this is the contribution: the single-source title is the strongest default mechanism the collection has encountered. Where every member of a hierarchy holds his position from one instrument, mutual defence is automatic. It requires no communication, no ideology, no shared sentiment and no affection whatever — which is exactly what a robust default should require, since all of those things are expensive and perishable. It also produces a specific and detectable signature: **a legal doctrine forbidding inquiry into origins.** That is what *Wi Parata* is, functionally, whatever it is doctrinally, and the collection should treat such doctrines wherever it finds them as the load-bearing wall of a default rather than as jurisprudence. The diagnostic question for any hierarchy is: how many instruments do the members' positions derive from, and what happens if one is examined?

Second, the membership test, which is a measurement rather than an argument. Take from outsiders; buy from members. This state paid something over four and a half pounds an acre to acquire land from settlers between 1891 and 1912, and had paid about one fortieth of a penny an acre to acquire land from Ngāi Tahu in 1848, and was doing both kinds of transaction in overlapping decades. The ratio is the boundary of the hierarchy, expressed in money. It can be computed for any order that acquires property from both inside and outside itself, and it will name the membership line more accurately than any statute of citizenship.

Third, internal redistribution strengthens a default rather than weakening it, provided it is compensated. Bursting up the great estates looks like a hierarchy attacking itself and is the reverse: it exchanged a few hundred resented magnates for thirty-three thousand small holders, each with a Crown title and a state mortgage, each now personally invested in the finality of the register. The magnates were paid and mostly kept their homesteads. **A hierarchy that can redistribute internally with compensation buys itself a vastly wider base of defenders at the cost of nothing but a few families' amour propre** — and the collection should therefore stop reading such reforms as concessions extracted by the excluded. They are almost always transactions among the included.

Fourth, the default's cheapest instrument is promotion. The four Māori seats were made permanent by the private arithmetic of the men who would have preferred not to have them, and the Māori who occupied and rose beyond them worked the machinery because office was the asset and the machinery was what came with it. An arrangement that can admit an opponent individually, on terms, converts him from an adversary into a member with a position to protect, and does so without argument, without force, and without any need to monitor him afterwards.

And fifth, the limit, which should be stated because it sets up everything that follows. This default ran on a distributable asset. It could keep buying new defenders for as long as there was land to put them on, and it did so continuously from 1863 to about 1930 — military settlers, provincial purchasers, Liberal smallholders, soldier settlers after 1918. When the land ran out, the arrangement lost its capacity to recruit, and a default that cannot admit new members has to hold its existing ones by other means. That is where its later difficulties begin, and the fracture, when it came, did not come from any member ceasing to benefit. Every member benefited to the end. It came from the state moving the instrument itself, for fiscal reasons of its own, and thereby opening — for the first time since 1877 — a moment at which the register could be looked at.

A note on sources. Quoted exactly from public-domain primary material as transmitted: G. S. Cooper's report of 1867 that Hawke's Bay rangatira were allowed and sometimes tempted to take credit to an extent almost incredible, and thereafter began to sell their lands in every direction; and the Royal Commission of 1891 on Māori owners being surrounded by temptation and eager for money wherewith to buy food, clothes and rum, and on alienations being against the public interest because the land was obtained in large areas by capitalists — both quoted by Te Ara from period sources and not checked here against the originals, the second of which supplies this module's title. *Wi Parata v Bishop of Wellington* (1877) is quoted in an earlier module of this study and referred to here only in summary.

Paraphrased from modern scholarship and reference works, briefly and with credit: the New Zealand Parliamentary Library's research paper on the origins of the Māori seats, for the temporary intention of the Māori Representation Act 1867, its extensions in 1872 and 1876, and the reasoning by which European members concluded that abolition would put Māori voters onto the European rolls and endanger their own seats; Te Ara on the compact of 1856, on provincial land disposals to 1876, on Fenton's treatment of the trustee provision, on Liberal land policy and the Cheviot purchase, and on the Bank of New Zealand's position as the largest landowner in the country by 1894; the Ministry for Culture and Heritage on the Cheviot acquisition and the fire that followed it; R. P. Boast on Crown purchasing and on the consolidation schemes of the 1909 Act; the Wikipedia account of the 1876 Vogel ministry for the Piako Swamp episode and the ground of Grey's objection.

Contested figures and uncertainties. Liberal estate purchases 1891–1912: 223 estates, nearly 1.3 million acres, £5.95 million, from which this module derives a figure of something over four and a half pounds an acre; the derivation is arithmetic and the underlying totals come from a single source. Land offered for settlement 1892–1911 is given as 3.4 million hectares in 33,000 holdings, which cannot be reconciled with the purchase figure and evidently includes Crown land not acquired from settlers; the two series are not comparable and are not treated as such here. Cheviot is given as 84,755 acres in one source and 84,000 or 34,300 hectares in others. The 1966 *Encyclopaedia*'s statement that eight million acres were sold under provincial legislation in the twenty years to 1876 is used; its accompanying money figure of £76 million is implausible on its face for that acreage and period and has been omitted rather than reproduced.

Outstanding verifications, flagged by name. The Piako Swamp episode is drawn from a single encyclopaedia entry and the parliamentary record has not been consulted; the characterisation of Grey's objection as resting on the illegality of a direct sale of confiscated land and on favouritism to a political ally should be checked against

Hansard. The reasoning attributed to European members in 1876 regarding the abolition of the Māori seats comes from a parliamentary research paper's summary and not from the debates themselves. Whether *Wi Parata* was in any sense a response to the Piako Swamp controversy of the previous year is a chronological juxtaposition made here and not a claim of causation; no evidence of any connection has been sought or found.

MODULE 9

A Minister of Pākehā Affairs

Liberty: what protections existed from the apparatus, which faction bargained for them, the two votes cast in anger that carried the world's first women's franchise — and the population for whom habeas corpus was suspended by name while everyone else kept it

The test

A state has an apparatus. The question is whether anybody has protection from it, and the useful follow-up is where that protection came from, because protections are not gifts and they are almost never won by the people who need them most. The pattern the collection keeps finding is that a faction inside the hierarchy, bargaining from strength over something else entirely, extracts a concession that then hardens into a general right; and the residue of a dozen such fights, accumulated over centuries, is what a society later calls its liberties.

New Zealand is a good place to run that test because it acquired a reputation for being generous with rights very early and largely deserved it — the first self-governing country to enfranchise all adult women, universal male suffrage for one population eleven years before the other, compulsory state arbitration of industrial disputes, old-age pensions. It is also a place where habeas corpus was suspended by Act of Parliament for one named group while every other person in the country retained it, and where an entirely genuine right of petition to the sovereign was exercised repeatedly and returned, every time, to the government complained of.

Both halves are true and they are produced by the same mechanism.

The franchise, and the two votes cast in anger

Start with the property qualification, because everything else in the settler franchise story runs off it. The New Zealand Constitution Act 1852 gave the vote to men of twenty-one holding freehold worth £50 or leasing at £10, with no racial distinction written anywhere. Pākehā men were not freed of that qualification until 1879, and plural voting for owners of property in more than one district lasted until 1889.

Māori men, by contrast, had the vote from 1867 — eleven years earlier — for a reason that had nothing to do with generosity. Communal title could not be squared with a property test, so a separate franchise had to be created, and once created it could not be graded. It was expected to be temporary, pending the individualisation of Māori

title, at which point Māori would fall under the ordinary property qualification like everybody else. Individualisation went slowly, the arrangement was extended in 1872, and by 1876 the men who would have had to vote for abolition had worked out that abolition would put Māori voters onto their own electoral rolls. It became permanent. A liberty guaranteed and capped at four seats by one and the same private calculation.

Then women, and the famous case, which is famous for the wrong reasons.

Suffrage bills passed the House of Representatives comfortably in 1891 and 1892 and were killed both times in the Legislative Council, where opponents attached amendments designed to make the bill unacceptable. In 1893 a third petition was presented, signed by getting on for thirty-two thousand women — about a quarter of the adult European female population of the colony — and the bill went through the lower house again with a large majority. The liquor trade, fearing prohibitionist voters, petitioned the Council to reject it. Suffragists held rallies, wired the councillors, and gave their supporters white camellias to wear.

Richard Seddon, who had become Premier in April and opposed the measure, set about arranging the same result as before. He induced a junior councillor, Thomas Kelly, to vote against the bill while continuing to profess support for it in public. That manoeuvre so incensed two other councillors — William Reynolds and Edward Cephas John Stevens, both of whom had previously opposed women's suffrage — that they changed sides to embarrass him. The bill passed by twenty votes to eighteen on 8 September 1893. Eighteen councillors then petitioned Lord Glasgow to withhold assent. He signed on 19 September, and New Zealand became the first self-governing country in the world in which all adult women, Māori and Pākehā alike, could vote.

The world's first national women's franchise was carried by two men who did not believe in it, voting against their own convictions to punish a third man for being underhanded.

That is not a debunking, and it should not be read as one. The right was real, it was permanent, and the campaign that produced the situation was formidable. The honest reading is a two-stage one, and it is the module's first finding. **Popular pressure sets the price of open opposition; a factional accident supplies the margin.** Thirty-two thousand signatures did not carry the Legislative Council, but they made it too expensive for Seddon to kill the bill in the open — which is precisely why he had to work privately, which is what gave offence, which is what produced the two votes. The petition was not sufficient and it was not decorative. It changed the form the opposition had to take, and the form is what failed.

And then the thing that made the liberty stick, which is a separate mechanism and the more important one. Immediately after the Act, both the Liberals and their

opponents claimed credit for the enfranchisement and set about courting the new voters. **A liberty becomes durable at the moment some organised faction can profit from the people it protects.** Before that it is a concession, revocable when the mood changes; after it, it is an asset, and nobody proposes to take it back because everybody is trying to collect on it. The test of whether a right is genuinely established is therefore not whether it is written down. It is whether any organised interest would lose by its removal.

The upper house, broken by the metropole

The other great settler liberty fight of the period is the one the reputation forgets, and it fits the pattern exactly.

The Legislative Council, whose members held their seats for life, was the propertied interest's blocking mechanism, and it used that position against the Liberals' land and labour programme. Ballance demanded additional appointments to redress the balance; the Governor refused; the fight went to London, and the Colonial Office instructed the Governor to yield. In 1891 the Council was reconstituted, with new appointees serving seven-year terms instead of life — which, as the 1966 *Encyclopaedia* observes without embarrassment, was a sure guarantee of docility. The Council never blocked anything of consequence again and was abolished in 1950.

Note two things. The fight was entirely internal — one faction of the propertied class against another — and the arbiter was the metropole, in one of the last occasions on which that lever was pulled at all. And the residue is a permanent structural change in the constitution, obtained by nobody who was campaigning for anything on their own behalf.

The trade, and what happened when the procedure stopped delivering

Not every liberty in this story was gained. One was exchanged.

The Industrial Conciliation and Arbitration Act of 1894 gave registered unions a legal route to a binding wage settlement and, in return, took away the strike. It was accepted at a moment of maximum union weakness — the watersiders, seamen and miners had been beaten in the maritime strike of 1890 and were in no condition to fight again — and for a decade it delivered: no significant stoppages between 1894 and 1906, and a country known abroad as the one without strikes.

Then, from about 1905, the Arbitration Court stopped moving wages with prices, and the workers who had welcomed the system began to discover what they had given

up. The great strike of 1913 and the waterfront dispute of 1951 are both, structurally, the consequence: a right surrendered for a procedure, and no way to recover the right when the procedure ceased to deliver. **A liberty traded for a mechanism is only as good as the mechanism's willingness to perform, and it cannot be recovered by asking**, because the faction that gave it up did so at its weakest moment and the counterparty has no reason to renegotiate.

The liberty that was removed by name

Now the other side of the ledger, and it is the module's centre.

New Zealand never abolished habeas corpus. It suspended it, twice, in 1879 and 1880, for a single named population, in open session, in printed statutes, while every other person in the country retained it in full.

The Māori Prisoners' Trials Act 1879 recited the necessity that the ordinary course of law be suspended so that the Crown could move the time and place of the prisoners' trials as it found expedient. The Māori Prisoners Act 1880 dispensed with the trials altogether, providing that those committed and awaiting trial should be deemed to have been lawfully arrested, to be in lawful custody, and to be lawfully detained. The West Coast Settlements (North Island) Act 1880 made ploughing, fencing and pulling up survey pegs criminal offences and let any armed constable arrest without a warrant. In all, 405 people were imprisoned — 182 ploughmen and 223 fencers — for a campaign in which nobody raised a weapon. The Crown's own West Coast Commission reported in August 1880 that they were held not for crimes but for a political offence in which there was no sign of criminal intent, and the imprisonment continued. Te Whiti and Tohu were held for sixteen months without trial and afterwards charged with sedition, and an indemnity was issued covering everyone who had acted for the Crown.

Work out why that was possible, because the answer is the module's contribution.

It was not that New Zealanders in 1880 did not believe in habeas corpus. They believed in it entirely, and if the same Bill had applied to settlers there would have been a constitutional crisis. It was that the people it applied to had four members in a House of some eighty-odd, and everyone else's protection was untouched. **The survival of a protection is a function of the parliamentary weight of the population that needs it.** Nobody in that Parliament had to decide that Māori deserved less protection than other subjects; the drafting made the question never arise for anybody whose vote mattered. The Act's targeting is what made it cheap.

And that yields a general instrument. **The technique of a modern representative state is not the abolition of a liberty but the named exception**, which costs almost

nothing politically, generates no alarm among the people who keep the right, and leaves the principle standing as a monument over the specific hole. An observer measuring this order's civil liberties in 1880 by asking whether habeas corpus existed would have got a completely accurate and completely misleading answer.

The same instrument shows up elsewhere in the record. The Tohunga Suppression Act 1907 created an offence that only one population could commit, and made prosecution dependent on the consent of the Native Minister — a criminal law whose enforcement was a matter of ministerial discretion, which is a description of a political instrument rather than a public health measure. And in 1865 the Native Rights Act had declared Māori to be natural-born subjects and, on the Native Minister James Fitzgerald's argument that it was futile to demand Māori come under English law while barring them from the courts on the one question that concerned them, opened the Supreme Court to questions of customary title. Twelve years later *Wi Parata* held that the courts could not inquire into native title at all. A liberty legislated in 1865 and judicially voided in 1877, without a word of the 1865 Act being repealed.

The single exception that proves the rule is 1951, when a Pākehā faction lost the hierarchy's protection and discovered how fast the same machinery worked: emergency regulations imposing censorship, prohibiting publications favourable to the strikers, giving police sweeping powers of search and arrest, and making it an offence to feed a striker's children. It took about a week. The apparatus had never been dismantled. It had simply never been pointed that way before.

What the excluded built instead

Denied protection from the apparatus, Māori did two things: they exercised the rights they formally had, and when those produced nothing, they constructed a duplicate of the institution that was refusing them.

The petition. Māori petitioned Parliament constantly through the second half of the nineteenth century, and from 1882 successive deputations travelled to England at their own expense to petition the Treaty partner directly. Tāwhiao led one in 1884, asking Queen Victoria for a Māori parliament and an independent commission of inquiry into the land confiscations, and taking care to state that the Kīngitanga was not separatist, did not reject the Queen's authority, and existed so that Māori might more effectively claim her protection — King and Queen coexisting, with God over both. He did not meet her. The petition was referred back to the New Zealand government, which dismissed it. Every such deputation, from 1882 onward, met the same answer.

Afterwards Tāwhiao wrote to the Governor: *"no matter how you may be addressed you will not regard nor reciprocate."*

That sentence is the exact measurement of a right that exists and delivers nothing. Nothing was suppressed. Nobody stopped him travelling; the petition was printed in London by a respectable firm; the Colonial Office received it and dealt with it in the ordinary way, which was to send it to the government being complained of. **The operative question about any right of appeal is not whether it exists but who receives it** — and an appeal determined by the respondent is a formality that generates, as its principal output, a documentary record of its own exercise, which can later be cited as proof that the right was available.

The parallel parliament. So they built one. Tāwhiao established Te Kauhanganui at Maungakawa around 1890: a lower house, the Whare o Raro; an upper house, the Whare Ariki, its name probably taken from the House of Lords; a council of ministers; twelve tribal representatives, the tekau-mā-rua; a written constitution in 1894; and its proceedings reported in the Kīngitanga's own newspaper, *Te Paki o Matariki*. It met into the 1920s.

And it had a minister of Pākehā affairs.

That office is the most eloquent object in this module. The colonial government had a Native Minister — a portfolio for administering the affairs of the people who were not properly of the polity. Te Kauhanganui created its mirror image and gave it the same standing, which is at once a claim of equivalence, a piece of exact structural mimicry, and a joke with a very hard edge in it.

The other body, Te Kotahitanga, first met at Waipatu on 14 June 1892 and sat annually until 1902 — at Pākirikiri, Rotorua, Taupō, Pāpāwai, Waiōmatatini — with a hundred and forty seats across two houses, a premier and a speaker. Hāmiora Mangakāhia was its first premier; Henare Tomoana, a former member for Eastern Maori who would later sit in the colonial Legislative Council, was its first speaker. In 1893 Meri Te Tai Mangakāhia moved before it that Māori women should both vote for it and sit in it — in the same year, and independently, as the Electoral Act was going through the colonial Parliament.

And here is what those institutions were asking for, which disposes of the reading that they were separatist. Te Kotahitanga's stated object was legal validation from the New Zealand Parliament and the retention of Māori land. Tāwhiao's petition asked for a Māori parliament and an inquiry. Both were requests that the state activate a provision it had itself enacted in 1852 and never once brought into force: section 71 of the Constitution Act, providing for districts in which Māori law, custom and usage would be maintained. The excluded were not demanding a new order. They were asking, with two houses and a constitution and a newspaper, that the dead letter be brought to life.

It was not. What happened instead is the neatest illustration in this study of the mechanism by which this hierarchy disposed of opposition. In 1900 James Carroll and Hōne Heke Ngāpua — two Māori members sitting inside the colonial Parliament — carried the Māori Councils Act, establishing statutory Māori councils with limited local powers. By 1902 Te Kotahitanga's role had been largely superseded by those councils, and at its tenth and final session, at Waiōmatatini, its members voted unanimously to dissolve it.

The parallel parliament was not suppressed. It was made redundant by a statutory version of itself, drafted by men the hierarchy had admitted, and it closed itself down by its own unanimous vote.

Reading liberty against the framework

First: the two-stage rule for how a liberty is actually won. The collection's standing position — that the peasant does not create his own protections, that a faction inside the hierarchy extracts them while bargaining over something else — holds here, and this case sharpens it into a sequence. Thirty-two thousand women signed and the House passed the bill three times, and none of that carried the upper chamber; two hostile councillors punishing a premier's underhandedness carried it. But the petition was not ornamental, because it is what made open opposition too expensive and forced the opposition into the covert form that gave the offence. **Popular pressure determines the form the opposition must take; a factional accident inside the hierarchy supplies the votes.** Neither alone would have done it, and accounts that credit only one are wrong in both directions.

Second: the conversion test, which is what makes residue accrete. A concession becomes a liberty when an organised interest begins to profit from the people it protects. Both parties courted the women's vote within months; European members preserved the Māori seats to protect their own margins. In each case the protected population became an electoral asset, and an asset is not repealed. **The durability of a right is measured not by its enactment but by whether any faction would lose money or seats if it went.**

Third, and this is the module's contribution: liberties are removed by named exception, not by abolition, and the exception is invisible to everyone who keeps the right. New Zealand's habeas corpus was never abolished, never weakened in general terms, never even debated as a general question. It was suspended for a population with four seats in a House of eighty-odd, in a printed Act, and everybody else's protection stood untouched — so no faction had to defend it, because no faction had lost anything. **The survival of a protection is a function of the parliamentary**

weight of the people who need it, and a state that has learned to draft the exception by name can dismantle a right for whoever it likes while leaving the principle standing, intact and much-admired, as a monument over the hole. This is more dangerous than open repeal, because open repeal alarms everybody and a named exception alarms nobody, and because the resulting record shows a country with strong civil liberties, which is accurate.

Fourth: an appeal decided by the respondent is a null that manufactures evidence of its own sufficiency. From 1882 Māori exercised, at their own expense and without any interference, a genuine right to petition the Crown; every petition was referred to the colonial government complained of, and dismissed. The right generated printed petitions, Colonial Office minutes and a documentary trail that would afterwards be cited to show that redress had been available. Tāwhiao stated the finding himself: no matter how you may be addressed, you will not regard nor reciprocate. **When assessing whether an order provided redress, do not count the appeals; find out who decided them.**

And fifth: a parallel institution is a photograph of the exclusion that produced it. Te Kauhanganui and Te Kotahitanga were built with two houses, a constitution, ministers, a speaker, a premier and a newspaper, because those were the forms the excluding institution used, and both bodies explicitly sought validation *from* the Parliament that excluded them, under a clause that Parliament had enacted and never used. **Where the excluded build a duplicate rather than an alternative, they are reporting that they were denied standing rather than denied the order** — and the mirror office, the Kauhanganui's minister of Pākehā affairs, states the exact term of the exclusion better than any grievance document could. The subsequent history is equally instructive: the duplicate was not suppressed but superseded, by a statutory council system drafted by Māori members the hierarchy had promoted, after which it dissolved itself unanimously. An arrangement that can promote its critics does not need to prohibit their institutions. It can offer them a smaller, funded, statutory version and let them close the original down themselves.

A note on sources. Quoted exactly from public-domain primary material as transmitted: Tāwhiao's letter to the Governor after one of the London deputations — that no matter how you may be addressed you will not regard nor reciprocate — as quoted by the Ministry for Culture and Heritage; the preamble to the Māori Prisoners' Trials Act 1879 and the operative words of the Māori Prisoners Act 1880, both as quoted in modern legal-historical accounts and flagged in an earlier module of this study as requiring direct verification against the statutes on the New Zealand Legal Information Institute, which has not yet been done; and the West Coast Commission's

finding of August 1880 that the prisoners were held not for crimes but for a political offence in which there is no sign of criminal intent.

Paraphrased from reference works and modern scholarship, briefly and with credit: the Ministry for Culture and Heritage and Te Ara on the passage of the Electoral Act 1893, including the 1891 and 1892 defeats in the Legislative Council, the third petition of nearly 32,000 signatures representing about a quarter of adult European women, the liquor trade's counter-petition, Seddon's inducement of Thomas Kelly, the change of position by William Reynolds and Edward Cephas John Stevens, the vote of 20 to 18 on 8 September 1893, the eighteen councillors' request that Lord Glasgow withhold assent, and his signature on 19 September; the 1966 *Encyclopaedia of New Zealand* on the Legislative Council fight of 1891 and the Colonial Office's instruction to the Governor; the New Zealand Parliamentary Library on the origins and 1876 entrenchment of the Māori seats; Te Ara and Wikipedia on Te Kauhanganui and Te Kotahitanga, including the tekau-mā-rua, the 1894 constitution, the minister of Pākehā affairs, the 140 seats, the annual meeting places, and the unanimous dissolution of 1902 following the Māori Councils Act 1900; and Te Ara on the Native Rights Act 1865 and Fitzgerald's argument for opening the Supreme Court to customary title questions.

Contested figures and uncertainties. The 1893 petition is variously given as bearing 31,872 or "nearly 32,000" signatures, representing "almost a quarter" of the adult European female population. The size of the House of Representatives in 1880 is given here as "some eighty-odd" members including four Māori; the exact figure has not been checked for that session, and the 12th Parliament elected in 1893 comprised 74 members. Te Kauhanganui's founding is dated variously to 1889 and 1890. Whether Meri Te Tai Mangakāhia's 1893 motion was carried, and in what terms, has not been established here; only that it was moved.

Outstanding verifications, flagged by name. The account of Seddon's manoeuvre with Thomas Kelly rests on secondary sources including an encyclopaedia entry and a popular history, and the parliamentary record has not been consulted. The characterisation of the two councillors' motive as embarrassment or anger at Seddon is uniform across the sources but is an attribution of motive, and no contemporary statement by either man has been sought. The claim that Te Kotahitanga's object included legal validation from the New Zealand Parliament comes from Te Ara's summary rather than from the body's own resolutions.

MODULE 10

A Supplementary Order Paper

Change: the marches that were contained without difficulty, the customer who changed markets, and the token sentence inserted late at night into a fiscal statute that reopened a register closed since 1877

What did not happen

Nothing in this study collapsed. There was no revolution, no coup, no successful rising, no conquest by a rival power, no moment at which the apparatus failed. The state that governs New Zealand today is administratively and legally continuous with the one William Hobson proclaimed in May 1840; its courts sit in a line running back through *Wi Parata*; its Parliament is the same institution that passed the Māori Prisoners Act. Whatever changed here changed inside a structure that never broke.

So this module is about repricing, and the question is the one the collection always asks: who did it, and what made them?

The answer available in the record is unusually clean, because the events are recent, the documents are complete, and the popular energy is impossible to miss. It is also unusually uncomfortable, because the popular energy turns out not to be the mechanism.

The risings, and what became of them

Between 1971 and 1984 there was sustained, organised, courageous Māori protest of a kind the country had not seen since Parihaka. Its history is well kept and its outcomes are documented, so it can be assessed rather than admired.

Ngā Tamatoa, an Auckland-based movement drawing on liberation politics abroad, disrupted the Waitangi Day ceremony in 1971 and walked out of it in 1972; the same year, with the Te Reo Māori Society, they presented the language petition. In September 1975 Te Rōpū Matakite o Aotearoa set out from Te Hāpua in the far north under the leadership of Whina Cooper, then seventy-nine, and walked a thousand kilometres down the length of the North Island, stopping at marae along the route, reaching Parliament on 13 October with something like five thousand people behind them and the slogan *not one more acre of Māori land*. Between 1977 and 1978, Ngāti Whātua occupied Bastion Point at Ōrākei for five hundred and six days. In 1978 Tuaiwa Rickard led an occupation at Raglan of a golf course built on land taken from

Māori during the Second World War for a military airfield and never returned. In February 1984 a hīkoi walked from Ngāruawāhia to Waitangi, four thousand strong, hoping to meet the Governor-General.

Now the outcomes, in order.

Bastion Point ended on 25 May 1978, when police and army personnel removed two hundred and twenty-two people. At Raglan, Eva Rickard and others were arrested on the ninth hole. At Waitangi in 1984 the four thousand were prevented from crossing the bridge and did not meet the Governor-General. None of these events altered any element of the arrangement at the time it occurred, and all of them were contained by an apparatus that did not have to strain.

And the Land March, which is the one usually credited with a structural consequence, requires care. The claim is that it produced the Waitangi Tribunal. It did not. The Treaty of Waitangi Bill was already before Parliament when the march set out, and was in its final passage while the marchers were on the road. Its author was Matiu Rata, the Minister of Māori Affairs — whose birthplace was Te Hāpua, the settlement the march started from. Rata's initial position was that the march would undermine what he was attempting from inside the government, and he sought to head it off; peace was made on the first night when he sent a telegram of blessing.

So the statute that would eventually matter more than anything else in this module came from a member of the hierarchy, working the hierarchy's own instruments, and its author began by trying to stop the march now credited with producing it. And what the statute delivered, for the first decade, was very little: the Tribunal could not consider historical grievances at all, and it was about five years before it began to serve any of the purposes Rata had in mind.

This is not a diminishment of the people who marched, and the module will return to what their pressure did do, which is real and traceable. It is simply what the record shows. A functioning state apparatus is not defeated by five thousand people walking, or by five hundred and six days of occupation, or by anybody standing at the wrong end of a bridge.

The customer who changed markets

What actually cracked was the money, and the crack was imported.

This study has traced the imperial relationship as a creditor's rather than a landlord's: Britain took no tribute from New Zealand, levied no imperial tax, and extracted nothing but interest on private lending. From 1882, when the *Dunedin* carried the first successful cargo of frozen mutton, the relationship acquired its second and larger dimension — Britain as the customer. New Zealand's entire economic

structure, its farms, its freezing works, its railways and its ports, was built to supply one market on the other side of the world.

In 1961 Britain announced that it intended to join the European Economic Community, whose common agricultural policy was designed to exclude outside producers. New Zealand spent the next decade in what was, by any measure, a remarkable piece of diplomacy — a country of under three million negotiating access quotas from a bloc of over two hundred million — and on 1 January 1973 Britain went in anyway, with the concessions in place and the direction settled.

Then the oil shocks of 1973 and 1979. Between 1960 and 1980, New Zealand's income per head fell from third to seventeenth among the twenty-four OECD countries. Robert Muldoon, Prime Minister and Minister of Finance from 1975, tightened controls, borrowed heavily for a programme of large energy projects, and in 1982 imposed a freeze on wages and prices that held until 1984.

In June 1984 a run began on the dollar, which the Reserve Bank's own deputy governor had warned was significantly overvalued and vulnerable to any significant political event. Muldoon called a snap election, lost it, and then for several days declined to devalue on the instruction of the incoming government — a refusal that produced a constitutional crisis and ended in a twenty per cent devaluation. Roger Douglas, about to become Minister of Finance, said afterwards that the fixed exchange rate and the run were among the things that had brought the country to its knees in 1984.

That is the framework's second crack, and it arrived in the least dramatic form available: not a war, not a rising, not a rival army, but a customer changing suppliers. The apex was not overthrown. It ran out of money, and a state that has run out of money must reprice the arrangement, because it can no longer afford the terms on which it has been operating.

The clause nobody read

The fourth Labour government's answer was to corporatise the state. Departments running forestry, electricity generation, mining, the post office and large tracts of Crown land were to be restructured as companies and operated for profit, with the eventual prospect of sale. The State-Owned Enterprises Bill was introduced on 30 September 1986 and pushed through under urgency, with little time for scrutiny or consultation, as one element of a very large and very fast programme.

The assets involved amounted to the ownership of something like thirty-seven per cent of New Zealand's land surface.

The Bill made no reference to the Treaty of Waitangi at its first reading. But the Waitangi Tribunal — which had been given retrospective jurisdiction back to 1840 only the previous year — produced an interim report to the Minister of Māori Affairs, warning that land transferred to a Forestry Corporation or a Land Corporation would pass beyond the Crown's power to return, because the corporation would either sell it to a private buyer or decline to sell it back; and that this would frustrate the settlement process the state had itself established. Māori organisations objected.

At the committee stage the government inserted, by supplementary order paper, late in the process, with minimal debate and almost no discussion of its implications, a single sentence:

> *Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.*

It was a gesture. Nobody in the House knew what the principles of the Treaty of Waitangi were, because no court had ever said, and the question had not been justiciable since 1877. The clause was there to answer a criticism, in a Bill that was about corporate structure, at the end of a sitting, during the most compressed legislative programme in the country's history.

The New Zealand Māori Council brought proceedings. On 29 June 1987 the Court of Appeal — Cooke P, with Richardson, Somers, Casey and Bisson JJ — held that the transfers as proposed did not accord with the principles of the Treaty; and, since it could not decide that without knowing what the principles were, it stated them. The Treaty signified a partnership, requiring the partners *"to act towards each other reasonably and with the utmost good faith. That duty is no light one. It is infinitely more than a formality."* The Crown had a duty of active protection of Māori interests, and a duty to provide redress for past breaches. The Court then left the Crown and the Council to agree a mechanism ensuring that assets held by state-owned enterprises remained available to settle historical claims.

Cooke described the case as perhaps as important for the future of the country as any that had come before a New Zealand court. Richardson said it was of the greatest public importance for its effect on race relations. Twelve decisions of the Court of Appeal between 1987 and 1993 followed — on forests, on coal, on the radio spectrum, on broadcasting assets — and a body of Treaty jurisprudence came into existence where none had been.

That is the register being opened for the first time since Prendergast closed it in 1877. It was not opened by a march, or an occupation, or a change of national conscience. It was opened by a token sentence added to a fiscal statute as procedural

housekeeping, during a restructuring forced by a currency crisis, and then litigated by a body that had existed since 1962 and had finally found something to attach itself to.

What followed, and what kind of change it was

The settlements began: fisheries in 1992, Waikato-Tainui in 1995, Ngāi Tahu in 1998, and many since. Their arithmetic should be stated because it establishes what kind of event this was.

Waikato-Tainui settled for $170 million and an apology, against a confiscation of roughly 1.2 million acres. Ngāi Tahu settled for $170 million, an apology and a right of first refusal over Crown land, against some 34.5 million acres alienated between 1844 and 1864 for about £14,750. These are not restorations. They are compensated transfers, negotiated, statutory, and final — conducted entirely through the instrument this study has been describing since Module 2, and settled at figures the Crown could afford.

Which is exactly what the framework says a repricing looks like. The arrangement was not overturned. It admitted a set of claimants on terms, converted an open grievance into a closed contract, and thereby recruited the settling iwi as parties with an interest in the finality of the new register — which is the same mechanism by which it converted runholders into vendors in the 1890s and critics into ministers in the 1900s. Ngāi Tahu's $170 million has since been built into a very large commercial enterprise. That is a real and substantial thing, and it is also a stake in the arrangement continuing.

Why the other three cracks never came

For completeness, note what did not happen to this order, because the absences explain its continuity.

It was never conquered. No rival hierarchy ever landed. The two world wars cost the country heavily in men — proportionally among the heaviest losses of any combatant in the first — but they were fought elsewhere, and the floor at home was never touched; if anything the wars strengthened the state, as they did everywhere.

It never overbred its elite. The arrangement kept seating new claimants for a century and a quarter: military settlers on confiscated ground from 1863, provincial purchasers, Liberal smallholders from the 1890s, soldier settlers after 1918, and then, when the land ran out around 1930, a welfare state and a protected full-employment economy that seated claimants in a different currency. There was never a surplus of educated men with no position, which is the engine of most of the collection's revolutions.

And it never fractured. The default described earlier in this study — every Pākehā title deriving from one instrument — held completely. No faction inside the hierarchy ever had an interest in reopening the register, and none did. The register was reopened by a government that was not thinking about it at all.

Reading change against the framework

First, the hard thesis is confirmed, and this case is close to a controlled test of it. The popular energy here was substantial, sustained, well led, morally serious and extremely well documented; and every single instance of it was contained without difficulty by a functioning apparatus. Two hundred and twenty-two people removed from Bastion Point by police and army in a day, after five hundred and six days of occupation. Arrests on the ninth hole at Raglan. Four thousand people stopped at a bridge in 1984. The structural changes, when they came, came from a Māori minister legislating inside the hierarchy in 1975, from a fiscal restructuring in 1986, and from five judges in 1987. The people who marched did not open the register, and the people who opened it were not marching.

Second — and this is the module's contribution — the crack does not appear where the arrangement is attacked. It appears where the arrangement is restructured. The framework has been looking for the moment the floor gives way under pressure. In this case the floor was never under pressure and never gave way. What happened is that an exhausted apex, needing money, had to *move an asset* — thirty-seven per cent of the country's land surface — and an asset in motion has to be legislated for. Legislation reopens instruments that have been closed for a century, and reopens them at speed, under urgency, drafted by people thinking about corporate structure. **The moment of danger for a long-settled order is not the assault but the reorganisation**, and this suggests a general place to look: in any durable arrangement, find the occasions on which the ruling group had to rewrite its own foundational instruments for reasons of its own, and that is where the openings will be.

Third, a distinction between two kinds of gesture clause that the collection should carry. This study identified section 71 of the Constitution Act 1852 as a dead letter enacted to be read by a departing metropolitan audience: provision for Māori self-governing districts, never once brought into force. Section 9 of the State-Owned Enterprises Act 1986 was the same species of object — inserted to answer a criticism, treated as token, its implications undiscussed. But the two behaved completely differently, and the difference is structural. **Section 71 empowered the Crown to act and therefore required an act of the Crown to become live, which never came. Section 9 forbade the Crown to act, and a prohibition is live the moment**

somebody with standing asks a court to enforce it. A gesture that constrains the state is a loaded instrument; a gesture that enables the state is an ornament. The drafters of both appear not to have noticed which they were making, and the difference between them accounts for a hundred and thirty-four years.

Fourth, the honest concession, which holds and should be stated at full strength. The collection's position is that pressure from below is a genuine cause without ever being the proximate agent — the credible threat that makes a cornered elite widen the settlement rather than fight on. That is precisely the shape here, and the causal chain can be traced. Twelve years of Waitangi Day disruption, a land march the whole country watched, an occupation that took the army to clear, a golf-course arrest that embarrassed a government, and a Tribunal given retrospective reach in 1985 — the cumulative effect of all that was to make it politically impossible for a government in September 1986 to legislate the largest transfer of Crown land in the country's history while saying nothing whatever about the Treaty. **The protests did not write section 9. They made a clause of that kind necessary as a gesture, and the gesture turned out to be a lever.** That is a real causal contribution and it is not the same thing as making the change, and both halves of that sentence have to be held together to get the mechanism right.

And fifth, on the activation of residue. An earlier part of this study observed that an order which leaves its lapsed promises on the books because they are harmless has thereby stored a weapon for a future claimant. New Zealand did that with the Treaty for a hundred and ten years — declared a simple nullity in 1877, commemorated by almost nobody until the 1930s, and preserved throughout. Its activation required three things simultaneously: a claimant with standing and organisation, an operative instrument to attach the claim to, and a moment at which the state's own business put such an instrument within reach. The first two were assembled over a decade by Māori working inside and outside the hierarchy. The third was supplied by a run on the currency in June 1984. **Stored residue does not activate on its own and does not activate on grievance; it activates when the order, for reasons of its own, hands somebody a hook.**

A note on sources. Quoted exactly from public-domain primary material as transmitted: section 9 of the State-Owned Enterprises Act 1986; and the passages from the judgment in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 on the partnership requiring the parties to act towards each other reasonably and with the utmost good faith, that duty being no light one and infinitely more than a formality, and Cooke P's description of the case as perhaps as important for the future of the country as any that had come before a New Zealand court — the latter quoted

by Te Ara and by a professional legal publication from the report, the judgment itself not having been read in full for this module. Roger Douglas's remark that the fixed exchange rate and related interventions brought the country to its knees in 1984 is quoted from his own 1993 account as reproduced in a scholarly chapter.

Paraphrased from reference works and modern scholarship, briefly and with credit: the Ministry for Culture and Heritage and Te Ara on Ngā Tamatoa, the 1975 land march, the Bastion Point occupation and eviction, the Raglan occupation, the 1984 Waitangi hīkoi, and the 1985 conferral of retrospective jurisdiction on the Waitangi Tribunal; *New Zealand Geographic* on Matiu Rata's initial opposition to the march and his telegram of blessing; the Wikipedia and Te Ara accounts of the Lands case, including the introduction of the Bill on 30 September 1986, its passage under urgency, the Waitangi Tribunal's interim report, the insertion of section 9 at committee stage by supplementary order paper, and the composition of the Court; a Beehive speech for the figure of thirty-seven per cent of New Zealand's land surface and for Cooke's later observation about twelve Court of Appeal decisions between 1987 and 1993; EH.net and Te Ara for the economic sequence from Britain's EEC application in 1961 to the currency crisis of 1984, the fall from third to seventeenth in OECD income per head between 1960 and 1980, and Muldoon's wage and price freeze.

Contested figures and uncertainties. Participation in the 1975 land march at Parliament is given as about five thousand; the march ran from 14 September to 13 October 1975. Bastion Point: 506 days of occupation, ended 25 May 1978, 222 people removed. The 1984 Waitangi hīkoi is given as about four thousand. Settlement values are quoted at their nominal 1995 and 1998 figures of $170 million each and are not adjusted; the acreages against which they are set come from earlier modules of this study and rest on their own stated uncertainties. The figure of thirty-seven per cent of New Zealand's land surface for the proposed SOE transfers comes from a single official source.

Outstanding verifications, flagged by name. The judgment in the Lands case has not been read in full and its holdings are taken here from reliable summaries; the description of what the Court left to the parties to negotiate should be checked against the report before this module is finalised. The characterisation of section 9's insertion as late, minimally debated and treated as a token gesture is drawn from secondary commentary and has not been checked against Hansard for the committee stage of the State-Owned Enterprises Bill, which would settle it. The claim that the Waitangi Tribunal's interim report warned in terms that the transfers would frustrate the settlement process rests on a single secondary account quoting the report.

MODULE 11

Smooth Down the Dying Pillow

The grim accounting: a sword ledger smaller than a single morning in Belgium, a metabolic note called by the removal of land rather than the disruption of coordination — and a forgetting accomplished not by silence but by five hundred stone memorials to somewhere else

Two ledgers, and an arrangement that has not closed

This station of the method asks what an order cost, in two columns. The **sword**: what it killed, deported, imprisoned and starved, over its whole life. The **metabolic**: whether the conquest disrupted a system of coordination that had been carrying a population above what the land would bear unassisted, so that a note fell due and was paid in famine and epidemic. And then the third thing, which is not a column but a process — how, once enough time passed and the arrangement settled into the way the world simply is, people came to forget that violence had made it.

Two features of this case make the accounting unusual. The first is that the arrangement has not ended, so what follows is a running total rather than a closing balance. The second is that the two columns run in almost opposite directions, and an accountant who added only the first would report one of the least destructive conquests in the collection and would be describing a country that did not exist.

The sword

Count it plainly, with the uncertainties attached.

The New Zealand Wars ran from the burning of Kororāreka in March 1845 to the end of the pursuit of Te Kooti in 1872 — twenty-seven years, with long intervals of peace. The standard reckoning of the dead, which the sources themselves describe as uncertain, gives around five hundred and sixty British and colonial troops, around two hundred and fifty kūpapa fighting for the Crown, and around two thousand Māori fighting against it. That is something near two thousand eight hundred people over a generation, in a country the size of the British Isles.

To that add the imprisonments. Four hundred and five people from Parihaka were held for ploughing and fencing, many without trial, many in South Island gaols hundreds of miles from home, some of whom died there, the last released in 1898. Nobody was killed in the invasion of the village itself; the Sim Commission was told in

the 1920s that women had been raped by the troops and that some had borne children as a result. Te Whiti and Tohu were detained sixteen months without charge.

And to be honest about the ground this order fell on, add the ledger of the arrangement it displaced. The Musket Wars of roughly 1818 to 1840 killed on the order of twenty thousand people, with a range running to forty thousand, and enslaved or displaced thirty to forty thousand more. On Rēkohu in 1835 something between two hundred and sixty and three hundred Moriori were killed outright and the rest enslaved; of a population of perhaps sixteen hundred to two thousand, about a hundred and sixty were alive in 1863, and in 1870 the Crown's own court awarded the conquerors 97.3 per cent of the islands.

Now the figure that puts the colonial ledger in proportion, and it is not the one anybody expects.

On the morning of 12 October 1917, in front of Passchendaele on Bellevue Spur, about eight hundred and forty-three New Zealanders were killed in a few hours. It remains the greatest loss of life on a single day in the country's history. Roughly eighteen thousand New Zealanders died in or because of the First World War, out of a population of about 1.1 million, with some hundred thousand having served; more than two thousand seven hundred died at Gallipoli and nearly twelve and a half thousand on the Western Front.

One morning in Belgium killed about a third of everyone who died in all the wars fought in New Zealand across twenty-seven years.

That comparison is not a trick and it should not be rearranged to make a point. It is simply the arithmetic, and it says something structural: **the largest blood cost this order ever incurred was paid by settlers, overseas, in the service of an empire that had handed them self-government sixty years earlier and whose remaining bond with them was a market and a sentiment.** The order that took New Zealand killed about two thousand Māori in the taking, and about eight hundred of its own young men in a single morning at somebody else's battle.

The metabolic note

Now the other column, which is very much larger.

The framework's proposition is that advanced coordination and intensive agriculture lift a population above the carrying capacity of the land unassisted, and that a conquest or collapse which disrupts that coordination calls the note, payable in famine and epidemic. The Andes and Mesoamerica are the type cases: an imperial redistribution system, an irrigation regime, a granary, broken by conquest, and the population falls.

In the strict form the proposition does not apply here. Māori horticulture was hapū-scale, worked with digging sticks in gardens tended by kin groups; there was no imperial granary, no irrigation state, no redistributive apex, and therefore no coordination system for a conqueror to break. The Landscape of this study established why: there was no apex to break anything at.

Something adjacent happened instead, and it runs in an unexpected direction, and it is this module's finding.

The lift came from the conquerors' own crops, and it came before the conquest. The potato and the pig reached New Zealand from the 1790s and were adopted with speed: higher yields than kūmara, tolerance of colder ground, better storage, and labour released from the food economy. Te Ara puts the demographic consequence flatly — Māori were quick to accept introduced livestock and crops, and these *reduced their exposure to malnutrition, thus limiting the risk of infection*. So the population that met the Crown in 1840 was being carried in part on European cultigens, and the disease exposure that had arrived with the same ships was being partly buffered by them. Between 1769 and 1840 the population fell by perhaps ten to thirty per cent, from something around a hundred thousand to somewhere between seventy and ninety thousand; and the demographers are clear that the intertribal wars killed far fewer than the epidemics did.

Then the land went, and the buffer went with it. By 1891 Māori held just under eleven million acres. By 1900 the land in Māori hands had fallen to something like a tenth of the original tribal estates. By 1939 it was about nine per cent of the North Island.

And here is the timing that decides the question. The Māori population reached its recorded trough in 1896, at about forty-two thousand — thirty years *after* the fighting stopped, at the height of alienation by court and purchase. Fenton's census of 1858 had found about sixty thousand. Between 1840 and 1891 the population may have halved. The wars killed around two thousand Māori. The fall was of tens of thousands. The killing was not the mechanism.

And the payment was made in infection rather than famine, which is the modern form of the note. A landless population in a country with wage labour, imported flour and a functioning market does not starve to death; there is bread. What it does is become chronically undernourished, badly housed and overcrowded, and then die of things that a fed and housed population survives.

The figures are unambiguous. By 1891 the estimated life expectancy of a Māori man was twenty-five years and of a Māori woman twenty-three. Of Māori girls born in the 1890s, forty per cent died before their first birthday. Measles, whooping cough, mumps

and influenza, which in European populations mainly killed children, killed adults and children alike among Māori; typhoid was endemic; tuberculosis, which is the classic disease of poverty, malnutrition and crowding, ran through Māori communities for a century. In the influenza pandemic of 1918 about five per cent of the Māori population died, at a death rate more than eight times that of Pākehā. In the 1930s Harold Turbott's health survey on the East Coast found tuberculosis running alongside exactly the conditions that always accompany it — poverty, malnutrition, overcrowded housing. Serious epidemics continued in Māori communities into the 1940s.

There is one further link between the two columns that ought to be on the page, because it is rare to find the sword and the metabolic ledger connected so directly in a source. Te Ara records that in Taranaki and Waikato — the confiscation districts — people were reluctant to participate in any modern health programme, particularly one associated with the government. The violence of the 1860s was still killing people through the public health system of the 1920s, by having made the state's own medicine untouchable in the districts that needed it most.

So the note in this case was not called by the disruption of a coordination system. It was called by the removal of the resource base, slowly, by legal instruments, over sixty years. And the form of the payment follows from the form of the taking. A conquest that breaks a granary produces famine, which is acute, visible, dated, and impossible to attribute to anything but the conquest. A conquest that removes land in a market economy produces chronic morbidity, which is diffuse, undated, and can be attributed — was attributed, at the time, at length and in print — to the constitution, the habits, the housekeeping and the improvidence of the people dying of it.

Which is why the extinction doctrine was so serviceable. Isaac Featherston, physician and politician, said in 1856 that it was the duty of Europeans to *"smooth down ... [the] dying pillow"* of the Māori race. Alfred Newman, a prominent scientist, wrote in 1881 that *"the disappearance of the race is scarcely subject for much regret."* Neither man was wrong about the trend; the population was falling and would fall for another fifteen years. They were wrong about the cause, and the wrongness did work: a natural death requires no explanation, imposes no obligation, and generates no bill. It was the Māori member James Carroll who told the House in 1891, against the settled scientific opinion of his day, *"I am forced to the conclusion that it is a mistaken theory that the Native Race will rapidly decrease."* He was right. The population may already have been turning as he said it.

How the forgetting was done

The third item is not a number, and in this case it can be measured with unusual precision, because the state left physical evidence.

There are approximately five hundred civic war memorials in New Zealand. They commemorate Gallipoli, the Somme, Passchendaele, the Second World War, Korea, Malaya and Vietnam. Anzac Day, marking a failed landing on a Turkish beach in 1915, is the most widely observed commemoration in the country and has been for a century.

Of the wars fought on New Zealand soil, over twenty-seven years, in which some two thousand nine hundred people died and out of which a million hectares of land changed hands by confiscation, there was until 2018 no national day of commemoration whatever, and no requirement that they be taught in any school.

The way that changed is the most recent instance in this study of a mechanism the whole collection has been tracking, and it fits the pattern exactly.

In 2014 a group of students from Ōtorohanga College, some as young as fifteen, went to Ōrākau and Rangiaowhia for the hundred and fiftieth anniversary of the battle. They were led by kaumātua descended from the survivors, who told them at each site what had happened there and what it had meant for the hapū since. The events had taken place in the Waikato, where the students lived, and very few Pākehā seemed to know anything about them at all.

Two of them, Waimarama Anderson and Leah Bell, drafted a petition asking for a national day of commemoration and for the New Zealand Wars to be taught in schools. It gathered close to thirteen thousand signatures and was presented to Parliament in December 2015. King Tūheitia and the Iwi Leaders Forum took the cause up. Of the hundred and eighty-nine submissions made to the Māori Affairs select committee, almost three-quarters opposed the proposal that the wars be taught compulsorily.

The government announced a national day in August 2016. The first observance was held on 11 March 2018, the anniversary of the attack on Kororāreka in 1845. Subsequent observances have been held on 28 October — the anniversary of the signing of He Whakaputanga o te Rangatiratanga o Nu Tireni in 1835, the document on which the opening landscape of this study closed. Aotearoa New Zealand's histories became a compulsory part of the school curriculum in 2022.

Now look at the shape of the forgetting, because it is not what the word usually implies.

Nothing was suppressed. This study has already established that this order concealed almost nothing from anybody: the confiscation statutes were printed, the Parihaka imprisonments were reported by the Crown's own commission, the

parliamentary debates were published, and the archive is among the most complete in the colonial world. There was no censor and no burning. Everything necessary to know was continuously available.

What was built instead was five hundred stone monuments to wars fought twelve thousand miles away, a national day of mourning fixed in April, and a set of place-names, school rolls of honour and dawn services that occupied, entirely and sincerely, the room a country has for solemn public memory. **The most effective way to make an event unrememberable is not to hide it but to schedule something else in its place.** A country that commemorates one war with total seriousness is not concealing another. It is simply full.

And this is the same instrument identified earlier in this study, when the colony dated its own founding for ninety years to Hobson's proclamation of sovereignty on 29 January rather than to the Treaty of 6 February. The calendar was doing the work all along. It costs money, it involves crowds, it cannot be faked, and it is therefore the most honest statement a state ever makes about what it thinks it owes and to whom.

Reading the accounting against the framework

First, the metabolic note has a second form and this case supplies it. The classical form — a coordination system broken by conquest, the note called in acute famine — does not apply here, because there was no coordination system above the hapū to break. What happened instead was that the *resource base* was removed, slowly, by court order and purchase and rate arrears, over sixty years, from a population whose numbers had partly been lifted in the first place by crops the conquerors had introduced. The note fell due late and was paid in chronic morbidity rather than in famine: a life expectancy in the low twenties by 1891, forty per cent infant mortality among girls born in the 1890s, tuberculosis for a century, and a pandemic death rate eight times the settler rate in 1918. **Where a conquest takes land rather than coordination, and does so inside a market economy, the note is paid in disease rather than starvation — which falls due decades after the taking, cannot be dated to any event, and is therefore readily attributed to the character of the people paying it.** That attributability is not incidental. It is what made the extinction doctrine both sincerely holdable and extremely convenient.

Second, a low sword count is not evidence of a mild order. About two thousand nine hundred dead across twenty-seven years is a small figure by the standards of this collection, and it is genuinely small — this was not Saint-Domingue and it was not the Congo, and pretending otherwise would falsify the record. But it is small because **the instrument was not a sword.** This order took a country with a register: with survey

liens, compulsory attendance at distant sittings, ten names on a memorial, charging orders for unpaid rates, and a doctrine that forbade the courts to inquire into origins. None of that appears in a casualty return. **When an order's transfer instrument is administrative, its sword ledger will understate its effect by an order of magnitude, and the effect will show up instead in the mortality tables thirty years later.**

Third, the two columns run in opposite directions and the timing proves it. The decade of maximum violence was the 1860s; the population trough was 1896. Nothing in the casualty figures explains a fall of tens of thousands, and nothing in the war chronology explains why the fall accelerated after the fighting stopped. An accounting that counted only the sword would rank this among the gentlest conquests on the shelf. **The two ledgers must be read against a single timeline, and where they diverge, the divergence is the finding.**

And fourth, forgetting is a scheduling operation, not a suppression. Nothing was hidden and the record was complete throughout, so the near-total absence of the New Zealand Wars from public memory for a century cannot be explained by concealment. It was achieved by the sincere, expensive, universal commemoration of other wars — five hundred memorials, a fixed April date, and a national grief that was entirely genuine and entirely elsewhere. **A calendar has a finite number of solemn days, and whoever fills them determines what a country is capable of remembering.** The confirming detail is what it took to add one: two schoolgirls who had been walked over the ground at Ōrākau by the descendants of the people who died there, thirteen thousand signatures, a king, and a select committee in which three-quarters of the submissions were against them.

A note on sources. Quoted exactly from public-domain primary material as transmitted: Isaac Featherston's remark of 1856 on the duty of Europeans to smooth down the dying pillow of the Māori race; Alfred Newman's statement of 1881 that the disappearance of the race is scarcely subject for much regret; and James Carroll's statement to the House in 1891 that he was forced to the conclusion that it was a mistaken theory that the Native Race would rapidly decrease — all three quoted by Te Ara from period sources and not checked here against the originals.

Paraphrased from reference works and modern scholarship, briefly and with credit: Ian Pool and the Te Ara demographic articles for the population series, the causes of decline, the observation that the musket wars killed far fewer than disease did, and the finding that introduced crops and livestock reduced Māori exposure to malnutrition and thereby limited infection risk; Te Ara for life expectancy at 1891, infant mortality among girls born in the 1890s, the 1918 influenza differential, Harold Turbott's East

Coast survey, and the reluctance to participate in government health programmes in Taranaki and Waikato following the confiscations; Danny Keenan's casualty reckoning for the New Zealand Wars as published by Te Ara; the Ministry for Culture and Heritage, the Commonwealth War Graves Commission and the WW100 programme for First World War figures; and the Ministry for Culture and Heritage, *E-Tangata*, RNZ and the Australian War Memorial for the Ōtorohanga College petition and the establishment of Rā Maumahara.

Contested figures, given with their spread. New Zealand Wars dead: approximately 560 British and colonial troops, 250 kūpapa and 2,000 Māori fighting against the Crown, all described as uncertain in the source; the aggregate of about 2,900 is derived and inherits that uncertainty. Musket Wars: around 20,000 dead with a range to about 40,000, and 30,000–40,000 enslaved or displaced. Rēkohu: 260–300 killed in the invasion, a population of about 1,600–2,000 in 1835, about 160 alive in 1863. Māori population: about 100,000 in 1769 on the conventional figure, itself contested and discussed in the opening landscape of this study; 70,000–90,000 by 1840; about 60,000 at Fenton's census of 1858; about 42,000 at the 1896 trough, with the Māori census return itself giving 39,854 and the difference turning on how people of mixed descent were counted. First World War: about 18,000 to 18,500 New Zealand dead, about 843 to 846 killed on 12 October 1917 depending on the counting rule, some 100,000 having served from a population of about 1.1 million; the claim that New Zealand suffered the highest casualty rate per head of any Commonwealth country is widely repeated and is not verified here. Civic war memorials: approximately 500. The Ōtorohanga petition is given as carrying between 12,000 and 13,000 signatures.

Outstanding verifications, flagged by name. The figure of about 120,000 Māori deaths from illness and other ordinary causes between 1810 and 1840, averaging four thousand a year, appears in one educational compilation citing Te Ara and represents total rather than excess mortality; it is not used in the argument above and is noted here only because it circulates. Whether the 1896 census figure of about 42,000 or the Māori census return of 39,854 is the appropriate trough figure depends on a definitional question this study does not resolve. The direct causal link asserted here between the confiscations and reduced uptake of public health programmes in Taranaki and Waikato rests on a single sentence in an encyclopaedia article and deserves fuller sourcing before the study is finalised.

MODULE 12

The Governor Was at Sea

Convergence and divergence: what this case shares with the others, the third answer to the chair problem, and the strongest case ever made for a settler colonisation — put at full strength and then answered by a man who did the opposite thing in the same decade with the same commission

What held

The framework came into this case with a set of expectations, and most of them survived contact with the sources. They should be listed before the divergences, because a lens that only ever finds exceptions is not a lens.

The floor is a floor. What organised violence achieved here between 1845 and 1872 was not obedience — it never obtained that — but the physical clearing of particular districts. Everything else was built on top of the clearing.

The robe is cut for whoever can revoke the licence. The 1839 instructions and the Treaty were procedural documents addressed to a metropolitan audience that could only audit procedure. When responsible government moved the power of revocation to a settler electorate, the robe changed genre within a generation, from claims about consent to claims about the character of the dispossessed. When the acquisition was complete and nobody held a revocable licence, it became reassurance, which asserts nothing and therefore cannot be refuted. And when a new holder appeared in the 1970s it was re-cut again, out of material that had been lying in a drawer since 1877.

Extraction is sorted by membership, and this case yielded the sharpest measurement of it the collection has: about one fortieth of a penny an acre from Ngāi Tahu in 1848, something over four and a half pounds an acre from settlers between 1891 and 1912, with the two policies running in overlapping decades.

The metropolitan column is empty, and this case supplied the control that turns the observation into a finding. Same state, same statute book: no censorship whatever while destroying Parihaka in 1881, and a full censorship apparatus within a week against dockworkers in 1951.

The default holds by self-interest without coordination. Every Pākehā title in the country derives from one instrument, so a runholder defending his lease defended the confiscation of the Waikato without ever thinking about it.

And structural change came from the hierarchy. Every popular action in the 1970s and 1980s was contained without the apparatus straining — two hundred and twenty-two people removed from Bastion Point in a day, arrests on a golf course, four thousand stopped at a bridge. What opened the register was a currency crisis, a corporatisation statute, and five judges.

Where it went its own way

Five divergences matter, and one of them is a genuine addition to the framework rather than a variation on it.

First, and largest: there was no chair, and this case supplies a third answer to that problem. The collection has established two poles. Where a conquest finds a seizable seat — a caliphate's capital, a working throne — it sits down in it and runs the machine unchanged, and the colony is cheap. Where it finds none, as in Kenya, it forges one: it raises a man the old order has cast out, because a man the old order still holds will answer to it and not to the forger, and then it pays for that forgery every year in force, because a chair nobody kneels to stands only on the rifle behind it.

New Zealand found no seat — no paramount, no office, no signature that could bind a district — and did not forge a chief. It forged a **title**.

The reason is not superior scruple. It is that the two poles were derived from conquests that wanted *obedience*, in the form of tax collected and order kept, and obedience requires a person to render it. New Zealand wanted the ground. A conqueror who wants ground does not need anybody to obey him; he needs a document that a purchaser and a Land Registry will accept. So the state built a court, converted overlapping customary interests into individual legal ones, wrote ten names on a memorial, and thereby manufactured vendors where no vendor had existed. The ten did not have to be the right ten. They had to be the ten the court had written down.

That instrument is cheaper than a forged chief by a wide margin, and the mechanism of the saving is precise. **A manufactured authority must be obeyed, and obedience must be monitored, and monitoring is the permanent cost of a belief that never took. A manufactured title need only be recorded — and a register is self-ratifying, because every subsequent mortgage, survey and sale that relies on it converts the original finding into settled fact.** It is why this colony could put its imperial regiments on ships in 1870 with the dispossession barely half-complete and complete it anyway; and it is why the state's most violent act against a peaceful population was provoked not by rebellion but by a plough, which is the one thing a register cannot survive.

So the chair variable needs a second axis. Not only *was there a seat to take*, but *what did the conqueror come for*. Tax needs a man. Land needs a clerk.

Second, formation was graded rather than withheld, because article three had made Māori British subjects in 1840 and there was no admission left to deny. The colony supplied primary schooling, English, the bell and the hygiene drill, and simply did not supply the secondary and professional formation that would have produced competitors — no state high schools until 1941. That fails differently from withholding: instead of an adversary formed by somebody else, it produces an adversary formed by the state itself, holding the state's authorities as genuinely his own, and attacking from inside its courts and its scriptures.

Third, the metropole was a creditor rather than a landlord. Britain levied no tribute and took no revenue from New Zealand; what flowed to London was interest to private bondholders. A creditor is indifferent to how the debtor conducts himself provided the coupon is met, which explains the entire shape of the imperial relationship — the willingness to hand over native affairs, the refusal to garrison except at forty pounds a head, and the complete absence of any attempt to reverse a policy London had itself called unjust.

Fourth, the floor was converted from a wage into a title and therefore could not be withdrawn. Military settlers recruited in August 1863, four months before the confiscation statute existed, and seated on the ground they had helped take. A floor paid in wages terminates when the payment stops; a floor paid in title has no payment to stop.

And fifth, the metabolic note was called by the removal of the resource base rather than by the disruption of a coordination system, so it fell due decades late and was paid in tuberculosis and infant mortality rather than in famine — which is the form that is hardest to date and easiest to blame on the people paying it.

The counter-position, at full strength

New Zealand is widely held to be the best-conducted settler colonisation there was. That case must now be put properly, because a study that softens it has answered nothing.

It begins with a treaty. Alone among the settler colonies, this one was founded on a negotiated instrument drafted in the conquered's own language, explained over two days of open argument in which chiefs told the Queen's officer to his face to go home, and then carried by ship and on foot to some fifty locations to gather around five hundred and forty signatures from people who could have refused and in several districts did. There is no equivalent document in Australia, in southern Africa, in

Algeria, or in North America at comparable scale and standing. It exists, it is on a wall in Wellington, and it is the reason there is anything to argue about.

Its third article made Māori British subjects in 1840 — full legal personhood at the founding, not deferred to some future stage of readiness. That single clause is the opposite of the deferral doctrine this collection has found in nearly every other colonial robe, and it had consequences: Māori could not be legally excluded from the franchise, from office, from the professions, or from a gum licence, because they were subjects.

Adult Māori men had the vote in 1867 — eleven years before Pākehā men, who remained subject to a property qualification until 1879 — with four guaranteed parliamentary seats that could not thereafter be removed.

There was never a pass law here. Never a registration tag at the throat, as in Kenya. Never a hut tax, a poll tax, a labour ordinance compelling men to settlers' fields, a system of native reserves with permits to leave them, or a statutory colour bar. Never a general disarmament: Māori fought for the Crown in large numbers throughout the wars, in some cases named their price in rifles, kept the rifles, and told the government what they were for. Never a censor: this state never banned a Māori newspaper or licensed the Māori press, and the only press physically seized in the whole story was the government's own, taken by Ngāti Maniapoto in 1863.

Māori entered the hierarchy and rose in it. A Native Minister who used the office to slow land sales. A Director-General of Health. An anthropologist of international standing. Knighthoods, portfolios, a party alliance that held four seats for half a century.

And then the part that has no parallel anywhere. This state built a tribunal to judge itself, gave it jurisdiction reaching back to the founding, allowed a court to define the founding document's principles against the government of the day, and has since paid settlements and issued formal apologies — under no external compulsion whatever, with no occupying power, no international sanction, no war lost. Te reo is an official language. The population that reached a low of about forty-two thousand in 1896 is now several hundred thousand times over what the extinction theorists predicted, and this is a thoroughly intermarried country in which the categories themselves blur.

Every one of those statements is true. None of them should be discounted, and a reader who comes away from this study thinking they are decorations on a swindle has misread it.

The answer

Three moves, and none of them requires denying anything above.

The sum did not change

Māori held all of it in 1840. About forty per cent of the North Island in 1890 — some 11.6 million acres, roughly half what they had held thirty years earlier. About twenty-seven per cent in 1910. Around nine per cent of the North Island by 1939. More than four million acres taken by confiscation; a further eight million passing through the Native Land Court between 1865 and 1890 alone.

The instrument was gentler and the transfer was more complete. This is not a paradox and the collection has been running into it since the beginning: **administrative instruments outperform violent ones.** A survey lien is more efficient than a punitive column, because it needs no garrison, produces no martyrs, generates an archive in which every transaction is lawful, and cannot be resisted without committing an offence. That the taking was done by clerks rather than by riflemen changes the moral texture of the record and does not change the arithmetic at the end of it.

The comparison class is doing the work

"The best-conducted settler colonisation" is a comparison *within a class*, and the class is defined by the settlers ending up with the land. To test the claim you have to find a British colonial administration in the same period that could have taken the land and did not.

There is one, and it is in the same ocean.

Fiji was ceded to Britain in October 1874. Its first substantive governor, Sir Arthur Hamilton-Gordon, had studied what had happened to indigenous peoples elsewhere in the Pacific and across the empire, concluded that the consequences had been catastrophic, and determined to prevent it. He stopped land sales on arrival. On 16 September 1875 the Native Lands Transfer Prohibition Ordinance was enacted, forbidding the alienation of native land by natives in the colony. The Native Lands Ordinance of 1880 deemed the legal tenure of all native land to be customary, as evidenced by usage and tradition. Planters objected and lost.

The principle survived. It survived independence in 1970 and four constitutions; section 28(1) of the 2013 constitution provides that ownership of all iTaukei land shall remain with its customary owners and that it shall not be alienated by sale, grant, transfer or exchange except to the state. Today something between eighty-three and eighty-seven per cent of Fiji's land is still held communally by indigenous landowning units and is available to outsiders only on lease. The resort you stay in and the farm along the coast are on somebody's lease.

So it could be done. A British administration in the Pacific, in the same decade, under the same Colonial Office, facing the same planter pressure, kept the land in indigenous hands, and the arrangement has now held for a hundred and fifty years.

And the same man was in both places

In 1880 Sir Arthur Gordon left Fiji to become Governor of New Zealand, retaining the High Commissionership of the Western Pacific.

In October 1881 he was at sea, returning from Fiji, when the ministry in Wellington put the Parihaka proclamation before the officer administering the government and had it signed — the proclamation giving the people of Parihaka fourteen days to accept the reserves offered or forfeit what they still held. Gordon landed shortly afterwards and was furious to discover it had been rushed through while he was away, a fact everyone concerned had understood perfectly well, because he was a known critic of the Taranaki policy and would not have signed it.

On 5 November sixteen hundred men marched on the village. Four hundred and five people went to prison. The Governor who had made Fijian land inalienable five years earlier could do nothing whatever about it.

The difference between the two colonies is not the quality of the men, because in this instance it is the same man. It is that Fiji was a Crown colony in which a governor could legislate, and New Zealand had had responsible government since 1856, in which a governor signed what his ministers put in front of him — and if there was any doubt he might not, they waited until he was at sea.

Which is this study's hardest finding, and its answer to the counter-position: **New Zealand's outcomes were worse than Fiji's for exactly the reason its reputation is best.** It was the most advanced, most self-governing, most democratic settler colony in the empire, and settler self-government removed the only brake that existed. A constraint imposed from outside on a Crown colony is a real constraint. A constraint that must be voted for by the people who would gain from its removal is not a constraint at all.

That is a structural observation and not an argument for colonial autocracy, which the record does not support either. Gordon's Fiji protected the land by banning the employment of Fijians as plantation labour and importing indentured labourers from India instead, creating an ethnic division that has produced coups from 1987 to the present; and a measles epidemic in 1875 killed something like a quarter of the indigenous Fijian population under that same benevolent administration. There is no clean case here. The point is narrower and more useful: it concerns *where a brake has to sit in order to work*.

What is owed to the achievement

Having said that, the temptation now is to conclude that the good conduct was a performance, and it was not. The evidence of this study points the other way, and the conclusion it supports is more interesting than either flattery or exposure.

The good conduct is real, and it is a function of constraint rather than of character.

Look at when it appears. In 1840 Britain had, in New Zealand: no soldiers at all; a humanitarian public in London at the height of its influence; a Colonial Office that did not want the country and said so in the founding despatch; a missionary body with its own independent line to that public; and a Māori population that was literate in its own language, held the trust of the translators, and could read the document it was being asked to sign. Five constraints, all operating at once. The Treaty is what they produced.

Look at when it disappears. Between about 1863 and 1900 — after responsible government, after native affairs passed to colonial ministers, after the imperial regiments sailed and the metropole's last practical lever went with them — the conduct of this order was not distinguishable from the shelf. Confiscation planned before the invasion it punished. Courts-martial and summary execution. Habeas corpus suspended by name for one population while every other person kept it. A village destroyed and four hundred and five people imprisoned, most without trial, for ploughing. A Chief Justice holding the founding treaty a simple nullity on the ground that no body politic capable of ceding sovereignty had ever existed. A commission of the Crown reporting that the Crown's own prisoners were political, and nothing following.

And look at when it comes back. From the 1970s: an urbanised, organised Māori population concentrated where it could be heard; an international audience newly attentive to what settler states did; a tribunal; a court with a statute to hold; a state that needed to move an asset and had to legislate to do it. Same country, same institutions, largely the same families. The conduct improved because the constraints returned.

Conduct tracks constraint. It does not track character. That is the most useful thing this study can hand forward, and it is neither a compliment nor an indictment. It says the question to put to any order is not what sort of people were running it, but what could stop them, and when, and who held the lever.

It also disposes of the two lazy readings at once. The reading that says New Zealanders were unusually decent is wrong, because the same population produced Parihaka. The reading that says the decency was a fraud is also wrong, because the Treaty was real, the Tribunal is real, the settlements are real, and none of it was

compelled by any outside force. What was actually going on is that a set of unusually strong constraints operated at the founding, lapsed for forty years at precisely the moment the land was being taken, and were partially rebuilt a century later by people who found the founding document still lying where it had been left.

Reading convergence and divergence against the framework

Five things this study returns to the collection.

One — the chair question needs a second axis. The existing account holds that a conquest's whole experience is downstream of whether the order it overran left a seizable seat. That holds, and this case adds the other half: it also depends on *what the conqueror came for*. A conqueror who wants a flow — tax, tribute, labour — needs a person to render it, and must therefore inherit a chair or forge one and pay the running cost of the forgery forever. A conqueror who wants the ground itself needs no person at all, only a document that a registry will accept. Where no seat existed and the object was land, the answer was a court, and a court is cheaper than a chief because a title has only to be recorded while a chief has to be obeyed, and obedience must be watched.

Two — the formation clock runs on competition, not on time. The corpus held that reaching the self-running pole takes centuries of formation. Aotearoa did it in about twenty generations, because a field with no rival order in it presents the child with only one set of marked authorities and nothing to weigh them against. The same variable predicts the other direction: an uncontested field is fast to re-form, which is why a second formation established itself across the north in fifteen years once the missionaries arrived with cues that were, in that instance, honest. And the diagnostic that came out of it — **if the resistance speaks the order's own vocabulary, the formation is real**, because coercion produces obedience and cannot produce a frame.

Three — liberties are removed by named exception, not by abolition. This state never weakened habeas corpus in general terms and never debated it as a general question. It suspended it for a population with four seats in a House of eighty-odd, in a printed Act, and everybody else's protection stood untouched, so nobody had to defend it. The technique costs nothing politically, alarms nobody, and leaves the principle standing as an admired monument over the specific hole.

Four — the danger to a settled order is restructuring, not attack. The floor here was never under pressure and never gave way. What opened the register after a hundred and ten years was that an exhausted apex needed to move thirty-seven per cent of the country's land into companies, had to legislate to do it, did so under urgency, and let a token sentence in. And the distinction that fell out of it: **a gesture clause that constrains the state is a loaded instrument, because a prohibition is live the**

moment anyone with standing asks a court to enforce it, whereas a gesture clause that empowers the state is an ornament, because it needs an act that will never come. Section 71 of the Constitution Act 1852 and section 9 of the State-Owned Enterprises Act 1986 were the same species of object. One hundred and thirty-four years separate what they did.

Five — conduct tracks constraint. Stated above, and it is the finding the whole study converges on.

The two documents

There is a photograph in the record of this case that is worth ending on, though nobody took it.

The Treaty of Waitangi is in Wellington, in a building purpose-built to hold it, visited by schoolchildren. It was declared a simple nullity by the Chief Justice of New Zealand in 1877 and remained one, in law, for a hundred and ten years. It survived because nobody thought it worth destroying.

The Land Registry is also in Wellington, and it is still operating. Every freehold title in the country still traces back through it to a Crown grant, and every Crown grant traces back to a confiscation proclamation or a finding of the Native Land Court, and neither of those has ever been reopened, and nothing in the settlement process reopens them. What the settlements do is pay a sum, in the state's currency, at figures the state can afford, in exchange for finality — which is the same instrument that converted runholders into vendors in the 1890s and critics into ministers in the 1900s, running once more.

Both documents are true at the same time, and the country contains both, and it has spent thirty years paying a bill it wrote itself, to claimants it recognises, under a treaty it once ruled had no legal existence. That is neither a swindle nor an atonement. It is what an order looks like when the constraints come back after the taking is finished, and it is the best outcome the record of this collection has to offer — which is a real thing to have achieved and a very long way short of what the words on the wall in Wellington actually say.

A note on sources. Quoted exactly from public-domain primary material as transmitted, and drawn from earlier modules of this study where the sourcing is set out in full: the Treaty of Waitangi in both texts; Lord Normanby's instructions of 14 August 1839; *Wi Parata v Bishop of Wellington* (1877); section 9 of the State-Owned Enterprises Act 1986; and the passages from *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641. The Fijian instruments referred to here — the Native Lands Transfer Prohibition Ordinance No. VI of 16 September 1875 and the Native

Lands Ordinance No. XXI of 1880 — are cited from a scholarly paper on Fijian land tenure and have not been read directly; section 28(1) of the 2013 Constitution of Fiji is likewise cited from secondary sources.

Paraphrased from reference works and modern scholarship, briefly and with credit: the Ministry for Culture and Heritage's series on Māori land loss 1860–2000 for the figures at 1890 and 1910 and for the four million acres confiscated and eight million passing through the Native Land Court between 1865 and 1890; R. Gerard Ward and subsequent Pacific scholarship on Fijian land alienation before and after Cession, and on the persistence of iTaukei tenure; the accounts of Sir Arthur Gordon's land policy in Fiji and of his tenure as Governor of New Zealand; and the British Kenya study in this series for the forged-chair finding and the Northern Nigeria case for the inherited-seat pole, both of which are the comparators this module argues against.

Contested figures and uncertainties. Fijian land still held under iTaukei tenure is given as 83 per cent in scholarly sources and 87 per cent in a reference-work summary; both figures are current-day and are quoted as a range. Māori landholding figures are given at 1890, 1910 and 1939 on three different bases — proportion of the North Island in the first two cases, proportion of the North Island in the third — and should not be read as a single series; the present-day figure for land in Māori title has not been established for this module and is not asserted. New Zealand war and population figures are carried forward from earlier modules with the uncertainties stated there.

Outstanding verifications, flagged by name. The account of Gordon being at sea when the Parihaka proclamation was signed, and of his anger on landing, rests on a modern journalistic treatment and on the Ministry for Culture and Heritage's summary; the precise interval between signature and landing, sometimes given as a little over two hours, is not relied on here, and the episode should be checked against Gordon's own papers and the Executive Council minutes before this study is finalised. The dates of Gordon's governorships — Fiji from 1875, New Zealand from 1880 — are taken from reference works and have not been checked against the *London Gazette*. The claim that planters objected to the Fijian prohibition and were overruled is drawn from secondary accounts. And the three statutes underpinning the Parihaka imprisonments, flagged in Modules 7 and 9, remain to be read directly on the New Zealand Legal Information Institute; several load-bearing quotations in this study reach it at second hand and that work should be done before publication.